Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work

STOPPING FORCED LABOUR

INTERNATIONAL LABOUR OFFICE

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STOPPING FORCED LABOUR

REPORT OF THE DIRECTOR-GENERAL

STOPPING FORCED LABOUR

Global Report
under the Follow-up to the ILO Declaration
on Fundamental Principles and Rights at Work

INTERNATIONAL LABOUR CONFERENCE
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Executive summary

Forced Labour is universally condemned. Yet the elimination of its numerous forms — old and new, ranging from slavery and debt bondage to trafficking in human beings — remains one of the most complex challenges facing local communities, national governments, employers' and workers' organizations and the international community. Tackling this denial of human freedom calls for multidimensional solutions to address the disparate forms that forced labour takes.[1]

Stopping forced labour is the second Global Report issued under the International Labour Organization's (ILO) new promotional tool, the follow-up to the 1998 ILO Declaration on Fundamental Principles and Rights at Work. The Report looks closely at the myriad forms of forced labour found in the world today and the various responses to them, with the aim of mobilizing greater support for their eradication. It closes by proposing a specific programme of action for discussion and approval by ILO constituents that strives for a holistic approach to eliminating this terrible practice.

Through an extensive survey of the available evidence, Part I of the Report examines the most prevalent forms of forced labour still in existence today. Worldwide attention to forced labour has increased in recent years through the international appeals to one country in particular (Myanmar) to rectify that persistent problem. Trafficking of women and children — mainly for prostitution and domestic service but also sweatshop work — has also increased dramatically throughout the world in the last ten years. In North America, several high-profile cases in sweatshop industries have resulted in severe penalties and heightened public awareness. In addition, millions of people live and work in conditions of debt bondage in many countries throughout South Asia and Central and South America.

Stopping forced labour reviews the history behind the ILO's and the United Nations response to the problem of forced labour, starting in the 1920s. The ILO adopted the Forced Labour Convention, 1930 (No. 29), following work that had been undertaken at the request of the League of Nations. The 1950s saw renewed attention to other forms of forced labour, either for punishment for political views or as vestiges of agrarian feudalism widespread at the time.

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[1] As the Report explains, the term "forced labour" has a particular legal meaning, and should not be confused with popular terminology sometimes used to describe poorly paid, dangerous or generally exploitative work.

The United Nations responded in 1956 with a Convention aimed at abolishing slavery, and the ILO with its Abolition of Forced Labour Convention, 1957 (No. 105). While universally condemned in these and other instruments, the practice nonetheless persists.

Within each category of forced labour identified, the Report provides information that sheds light on the disparate factors that bear on it. In several cases, the ILO and other international organizations have succeeded in helping reduce or eliminate the practice. The Report demonstrates that with a combination of political will and concerted efforts on the part of the international community, a range of ministries, the social partners and non-governmental organizations, forced labour can be abolished.

As the Report notes, slavery is still found in a handful of countries in Africa. Forced labour in the form of coercive recruitment is present in many countries of Latin America and in parts of the Caribbean, as well as elsewhere. Indigenous populations in particular suffer from this form of abuse. More in-depth examinations of situations in three countries of the region, used as examples, reveal how ILO assistance combined with governmental and civil society initiatives can reduce the problem (Brazil, Dominican Republic, Haiti). The variant in Africa — involuntary community and village labour — finds certain post-independence governments perpetuating colonial law and practices.

Domestic workers are often trapped in situations of forced labour; they are physically or legally restrained from leaving the employer's home, by means of threats or of actual violence, or through tactics such as retention of identity documents or pay. Overwhelmingly affecting women and children, and often closely linked to trafficking and migration, this practice exists in a number of countries.

Stopping forced labour devotes considerable analysis to the persistence of bonded labour in South Asia. Found mainly in agriculture and certain industries, millions of men, women, and children across the subcontinent are tied to their work through a vicious circle of debt. The Report first reviews India's 25 years of experience of making efforts to measure and eradicate the problem through a range of initiatives in that country. For example, solutions such as that pursued in the State of Andhra Pradesh, in which productive assets and credits were given to former bonded labourers, showed positive results in so far as this enabled male labourers to escape bonded labour. An unintended consequence, however, was an increase in the number of women falling into bondage, as they took over more responsibility for repaying family debt. This leads the Report to raise the question of why women can inherit the debt and therefore the debt bondage of their father or husband, but not always his land.

Turning to Pakistan, the Report cites serious abuses among landless tenant farmers in the Sind region, as documented by the Human Rights Commission of Pakistan. Some 1,000 labourers surveyed revealed that three-quarters had been subject to physical restraint, such as private jails, and that some 90 per cent of the children had been compelled to work. The Human Rights Commission of Pakistan has purchased land and set up temporary camps in order for families to take refuge.

In south-western Nepal, a classic example of semi-feudal agrarian bonded labour has existed for decades. Whole families, largely belonging to an indigenous ethnic group, have been caught up in a cycle of debt and bondage, which the Government has recently banned in law; indeed it has sought ILO assistance for its elimination in practice.

The use of forced labour by the military and other government entities, ostensibly for development purposes, has led to a high-profile situation involving

Myanmar. In an unprecedented decision in the 80-year history of the Organization, the ILO constituents have taken action under article 33 of the Constitution. Among other things, this has triggered a call for ILO member States, employers' and workers' organizations and other international organizations to review their relations with that country.

Stopping forced labour also discusses in detail the newly burgeoning phenomenon of trafficking in persons. This is a truly global problem: most countries of the world are "sending countries", "transit countries", "receiving countries", or a combination of all these. Although trafficking is an old practice, an internationally agreed definition was not reached until recently, in a Protocol to the United Nations Convention against Transnational Organized Crime that was opened for signature in December 2000. The definition of trafficking includes a reference to its coercive elements, including forced labour, debt bondage, and slavery-like practices. Indeed, the Report draws a link between modern trafficking and modern forms of bondage through indebtedness.

Much of the research and publicity regarding trafficking has concentrated on the sex trade sector. Prostitution is sometimes voluntary but overwhelmingly forced, and always so when minors are concerned. Surveys reveal widespread regional and international trafficking for this industry, often involving criminal organizations and sometimes conducted through family and community networks. In West Africa trafficked children are generally placed either in domestic service (girls) or in agriculture (boys), and are sometimes drawn into armed conflicts.

Europe has seen an explosion of trafficking since the break-up of the former Soviet Union. While difficult statistically to separate illegal border crossings from trafficked migrants, men and women from Eastern Europe and the Balkans constitute the vast majority of those on the move in this continent. *Stopping forced labour* calls for more research into the labour market conditions that create opportunities for such abuses, and into ways to eliminate them.

The Report, echoing the International Criminal Police Organization (Interpol), asks the question: Why is trafficking in drugs more heavily punished than trafficking in human beings? This is especially disturbing in light of the findings that few individuals or organizations, both on the demand and supply side of the equation, are ever sanctioned for their crimes. New approaches are providing witness protection programmes and similar measures to aid the victims of labour trafficking.

Prison labour poses serious dilemmas for ILO constituents. Two very different issues are raised in this Report: prison labour performed for private enterprises; and prison labour imposed by the State for what it characterizes as anti-social acts. The first of these is rapidly expanding in the face of the trend towards privatization, the second diminishing in relation to the number of regimes that impose such punishment for the expression of political views. Both are sharply criticized practices.

In Part II, *Stopping forced labour* analyses the efforts of the ILO and of other international agencies in preventing or eliminating these forms of forced labour, and in rehabilitating its victims. Certain successes have been registered, either through the ILO's supervisory bodies or its technical cooperation activities (often in cooperation with other organizations), or in the work of other agencies. The Report concludes that, without a holistic approach combining the strengths of several organizations, the international community's response to the problem will fall short.

Among the various types of forced labour, trafficking in persons has received perhaps the greatest amount of attention recently from a wide range of

international agencies and national governments. Highlighting the important role played by law enforcement, the Centre for International Crime Prevention (CICP) and the United Nations Interregional Crime and Justice Research Institute (UNICRI) have jointly developed the Global Programme against Trafficking in Human Beings. The International Organization for Migration (IOM) has, since 1996, implemented a programme in the Mekong subregion together with the ILO, combining the return and reintegration of trafficked and other vulnerable women and children.

Within the ILO, the International Programme on the Elimination of Child Labour (IPEC) has been the most active in addressing the problems of bonded child labour and trafficking of children. Either in concert with other international organizations or on its own, IPEC works intensively with governments, trade unions, employers' organizations and NGOs to raise awareness, intervene to stop the practice, and rehabilitate the children involved. The Report portrays measures taken to combat child trafficking in Africa and Asia. For instance, a major programme in the Mekong Delta region targets women as well as children. The involvement of women, through education, training, credit, and other empowerment tools, is crucial to any effective strategy to combat trafficking in children.

Microfinance and microcredit arrangements can play an important role in helping break the cycle of poverty and bondage. In addition to a specific component in a project being developed in Nepal and involving IPEC and the InFocus Programme on Promoting the Declaration (DECLARATION), an innovative ILO approach is being tested throughout South Asia by the Social Finance Unit. The basic objective of this project is, through research, advocacy and seed funding, to encourage existing microfinance institutions to develop, test and offer savings and loans products specifically for families at risk of falling into bonded labour situations. Addressing the complexity of the problem, the project also organizes support in the areas of education, primary health care, and income-generating activities.

While the Follow-up under the Declaration has a very different role to play from that of the supervisory machinery existing in relation to the application of ILO Conventions, the latter has often revealed obstacles encountered by member States in implementing the forced labour Conventions. This has in turn stimulated the provision of technical assistance to overcome these obstacles. The purpose of the current Report is not to rehash the findings of the supervisory machinery, but rather to highlight its successes in bringing certain problems to light and its role in helping to resolve them. One practical application of advisory services in relation to the principle of eliminating forced labour has come in the area of public works projects, which have been regularly reviewed to ensure that forced labour practices are not involved. International financial institutions have also sought ILO advice in regard to avoiding forced labour in the programmes they sponsor.

Workers' and employers' organizations, as well as individual corporations, have taken some concrete steps to address the problem. For example, the Global Compact — the United Nations system business partnership agreement — offers sources of information on how to run a commercial or agricultural business in a way that avoids the emergence of debt bondage. Trade unions, in addition to raising issues before the supervisory mechanisms, have brought attention to the problem through their own research, advocacy and membership recruitment.

Part II of *Stopping forced labour* provides the basis for an assessment of the effectiveness of ILO's assistance. While some successes, past and present, can be noted, especially regarding work undertaken in the rural sector, more concerted efforts will be required to deal seriously with the various forms of forced labour.

Part III of the Report explores what these efforts might look like, and how they might be put in place in the struggle against this scourge.

Finally, the Report poses a series of questions suggested for discussion by the International Labour Conference. Annexes provide the text of the Declaration and its Follow-up; a flow diagram illustrating the various steps of the follow-up; a table of ratifications of Conventions Nos. 29 and 105 and Declaration annual reports submitted on the elimination of forced labour; and information on international instruments relevant to forced labour.

This, the first Global Report on forced labour, is a call to deepen understanding and to redouble efforts to eliminate this terrible blight on human freedom in all its forms.

Introduction

Tackling old and new forms of forced labour

1. Forced labour — a relic of a bygone era? No, sadly not. Although universally condemned, forced labour is revealing ugly new faces alongside the old. Traditional types of forced labour such as chattel slavery and bonded labour are still with us in some areas, and past practices of this type haunt us to this day. In new economic contexts, disturbing forms such as forced labour in connection with the trafficking of human beings are now emerging almost everywhere.

Forced labour is the antithesis of decent work

2. Abusive control of one human being over another is the antithesis of decent work. Although they might vary outwardly, different types of forced labour share two common features: the exercise of coercion and the denial of freedom. It was in recognition of this affront to the human spirit that the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up included the elimination of all forms of forced or compulsory labour.[1] This Report essentially poses two questions in relation to this fundamental principle: What are the main patterns of forced labour today? What can the ILO, working with its constituents and partner institutions, do to prevent and eliminate it?

The opportunity of the ILO Declaration

3. The adoption of the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up in 1998 signalled a renewed international resolve to relegate forced labour to history. Under the ILO Declaration, all member States have an obligation to "respect, promote and realize" the elimination of all forms of forced or compulsory labour as part of a package of mutually reinforcing fundamental principles.[2] The Declaration requires the ILO to support countries' efforts to attain this objective and to marshal assistance from other institutions, thereby reinforcing its own capacity to respond to requests from member States wishing to move forward in this direction.

4. The eradication of forced labour presents a unique opportunity to translate the promotional nature of the ILO Declaration and its Follow-up into practice. But this calls for understanding more clearly what the principle entails, and why

[1] While the Declaration and its Follow-up refer to the elimination of all forms of *forced or compulsory labour*, this report uses the abbreviated term *forced labour*.

[2] The three other categories of principles and rights covered by the ILO Declaration on Fundamental Principles and Rights at Work are: freedom of association and the effective recognition of the right to collective bargaining; the effective abolition of child labour; and the elimination of discrimination in respect of employment and occupation. Each is the subject of a Global Report every four years; the first Global Report appeared in 2000: ILO, *Your voice at work*, Report of the Director-General, International Labour Conference, Geneva, 88th Session, 2000.

forced labour persists so resiliently today. As the first "global dynamic picture"[1] of the subject, this Report will perhaps raise as many questions as it answers. By identifying broad patterns of forced labour, the Report sets the stage for gaining increased knowledge as a basis for action. Where technical cooperation could respond to governments' stated desire to tackle the problem, the Report points to promising comprehensive approaches for ridding the world of a practice that irreparably damages human and national development.

Searching for lessons

3. The legal aspects of forced labour have been thoroughly explored by the ILO's supervisory machinery — in particular, three General Surveys and annual reports of the Committee of Experts, as well as discussions at the Conference Committee on the Application of Standards and representations and complaints under articles 24 and 26 of the Constitution. This Report does not aim to cover all the issues and complexities of forced labour, especially given the dearth of statistical information and analysis of the phenomenon from a socio-economic perspective. However, it does draw upon the insights available from the work of the ILO and other international organizations on the subject. It raises questions about why new forms of forced labour may now be emerging in the light of recent global economic and demographic trends, and why old forms stubbornly persist. Looking at initiatives already undertaken, it also searches for lessons to inform the design of a future technical cooperation action plan against forced labour.

The diverse patterns of forced labour today

6. After reviewing the historical background of the prohibition of forced labour, the Report takes a closer look at its main forms as they exist today:

- slavery and abductions;
- compulsory participation in public works projects;
- forced labour in agriculture and remote rural areas coercive recruitment systems;
- domestic workers in forced labour situations;
- bonded labour;
- forced labour imposed by the military;
- forced labour in the trafficking in persons; and
- some aspects of prison labour and rehabilitation through work.

Certain groups — such as women, ethnic or racial minorities, migrants, children, and above all the poor — are particularly vulnerable to these contemporary forms of forced labour. Situations of armed conflict can also compound the problem. Some patterns of forced labour will probably lend themselves more readily than others to ILO technical cooperation. This underscores the need for complementary work by a range of institutions and actors to address the policy failure that forced labour represents.

Practices are outlawed, but denial and impunity persist

7. The proscription of slavery and slavery-like systems such as forced labour is a peremptory norm in international law, allowing no derogations.[2] States have made significant progress in enacting legislation to eliminate these practices, and have embarked on special programmes against them. Given that they are illegal practices, however, their existence is sometimes denied. The real challenges are thus twofold. Firstly, there needs to be greater awareness of the economic, political and social frameworks that can uproot traditional forced labour practices and

[1] Under the Follow-up to the Declaration, a Global Report is to be drawn up each year under the responsibility of the Director-General and to cover one of the four categories of fundamental principles and rights in turn. The purpose of this Global Report is to provide a "dynamic global picture" of the situation and to serve as a basis for assessing the effectiveness of technical assistance and technical cooperation provided by the ILO, and as a basis for the ILO Governing Body to determine technical cooperation priorities and plans of action for the following four-year period.

[2] Barcelona Traction, Light and Power Co. Ltd. (Second Phase) (Belgium v. Spain), 1970, International Court of Justice Reports, 3, 32 and 304 (5 Feb.), separate opinion by Justice Ammoun; see also Vienna Convention on the Law of Treaties (1969), art. 53.

up new ones in the land. The law reform process the ILO has pursued with considerable success over the years is a starting point, but very much more remains to be done.

11. Secondly, the cycle of impunity that too often accompanies forced labour must be broken. Fortunately, there are some new developments at the international level that may assist in achieving this goal. One of these is that the issue of effective governance within countries is high on the agenda of the development community. Attaining better enforcement of laws that ban forced labour forms a natural part of repairing failures in governance that characterize many manifestations of forced labour. For ratifying States, Convention No. 29 requires ratifying States to punish the illegal exaction of forced labour as a penal offence and to strictly enforce the law.

12. Furthermore, the implementation of a rights-based approach to development through practical initiatives at the country level holds considerable promise for simultaneously addressing the developmental and human rights goals of eliminating forced labour.[1] This approach disallows development policies, projects or activities that have the effect of violating rights, and fosters those that embrace principles such as the elimination of forced labour as part and parcel of development strategies. It embraces the idea that when human development and human rights advance together, they reinforce one another to expand people's capabilities.

13. Finally, newly adopted instruments in the field of international criminal law hold promise for aiding in the fight against forced labour when it takes certain forms. Extreme cases of forced labour, if considered as a crime against humanity or a war crime, could be subject to the jurisdiction of the International Criminal Court — once the instrument establishing that body enters into force.[2] And with the adoption of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, the international community has also strengthened its resolve to combat phenomena that can contain elements of forced labour.[3]

14. It will not be an easy task to improve the socio-economic conditions that permit forced labour to breed, or to detect and punish the culprits who perpetrate it, support the victims who speak out and provide alternatives for them — particularly when the persons or institutions exacting forced labour are located in remote regions, when they also exercise political authority at the local or national level, or when they are part of the criminal underworld. Yet the seriousness of forced labour violations was underscored only recently, when the ILO made unprecedented use of a constitutional provision. In the framework of article 33 of its Constitution, the International Labour Conference called upon its tripartite constituents, as well as other international organizations concerned, to take action

Unprecedented ILO action underscores seriousness of forced labour

[1] A fuller description of the rights-based approach to development was presented by the United Nations Sub-Commission on the Promotion and Protection of Human Rights to the ILO Governing Body Working Party on the Social Dimension of Globalization in November 2000.

[2] Provision for establishment of the International Criminal Court was made under the Rome Statute, adopted in July 1998, which included offences of sexual slavery and forced prostitution; the finalized draft text of the Elements of Crimes adopted in 2000 specified that these may in some circumstances include exacting forced labour. United Nations Preparatory Commission for the International Criminal Court (PCNICC): *Finalized draft text of the Elements of Crimes* (New York, United Nations, 2000) doc. PCNICC/2000/1/Add.2.

[3] This Protocol, accompanied by the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplemented the United Nations Convention against Transnational Organized Crime. The Convention and both Protocols were adopted by the United Nations General Assembly on 15 November 2000 and opened for signature a month later (not yet in force).

against the widespread and systematic recourse to state-sponsored forced labour in one country (**Myanmar**).[6]

The past haunts the present

12. During the past 100 years or so, the coercive practices of forced labour first came to be associated with the colonial regimes of the early twentieth century and remnants of serfdom. Then came the concentration camps, labour camps and other forms of compulsory labour that blighted the mid-century period, and which haunt us to this day in the form of continuing claims for compensation involving countries and enterprises. With the contemporary consolidation of democratic regimes, together with more open economies and renewed commitments to fight poverty and transnational crime, there is fresh hope that forced labour can in fact be relegated to the past.

New forms of bondage emerging

13. And yet aspects of forced and compulsory labour remain tenacious. Some involve slavery-like systems such as debt bondage. Traditionally this has been found in rural areas, above all in agricultural systems where landowners have been the only source of financial credit. Yet there is also evidence that new forms of bondage are now emerging both within and outside agriculture, affecting migrant workers and workers in new frontier development areas as well as in urban domestic households, and sometimes involving bondage over a relatively short period rather than a lifetime. At their heart is an abuse of control over labour.

14. Paradoxically, there is still some uncertainty among ILO constituents as to whether certain practices do or do not constitute forced labour.[7] This Report therefore starts by reviewing the basic elements of a definition of forced labour. Further research is needed to examine the sociological, cultural and economic factors, including the gender dimension, that feed or starve forced labour practices.

A common responsibility

15. While the ILO has been given primary responsibility for forced labour, its eradication calls for concerted action by the entire international community. The ILO can and should take a lead on certain aspects of the problem, as it has done effectively in the past. But both for the presentation of the dynamic global picture of forced labour, and for the preparation of future action plans for its eradication, it is important to see how other international agencies have addressed the problems within their respective areas of competence.

Data gaps are severe

16. Some difficulties of data gathering and statistics have to be mentioned at the outset. How many people are affected by forced labour today? Where are they? And who are the main victims? How exactly does forced labour operate differently for men, women, boys, girls, youth, migrant workers, or various racial groups? What are the profiles of those who are benefiting directly from placing others in human bondage? While these issues crop up in this Report, it is not possible at this stage to give an accurate estimate of the numbers affected on a global scale; or to take into account in detail the diverse experiences of different categories as a basis for targeted action. Why? Forced labour is increasingly exacted in the illicit, underground economy. These are the areas that tend to escape national statistics. And the statistics available are not sufficiently refined to get a

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[6] ILO: Governing Body doc. GB.279/6/1, 279th Session (November 2000). International Labour Conference, 88th Session, Geneva, 2000, *Provisional Record* Nos. 4, 6-4 and 8, as well as documents referred to therein.

[7] This point emerged in the first review of annual reports under the Follow-up to the Declaration, in which the ILO Declaration Expert-Advisers detected confusion in some countries about the definition of forced or compulsory labour, and suggested that further awareness was needed to clarify understanding of the notion. See ILO: *Review of annual reports under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work* (subsequently referred to as *ILO Review of annual reports under the Declaration*), Part I, Introduction by the ILO Declaration Expert-Advisers to the compilation of annual reports, Governing Body doc. GB.277/3/1 (Geneva, 2000), paras. 91-92. The annual introductions and the compilations are available at www.ilo.org public English standards decl

proper handle on forced labour. While the most recent UNDP Human Development Report identifies seven freedoms as hallmarks of human development, the statistical indicators used in it do not capture forms of forced or compulsory labour.[10] Contemporary forms of forced labour urgently require more investigation and attention to prepare the ground for more accurate, gender-sensitive indicators and appraisals as a basis for policy determination and action in the future.[11]

Future avenues to pursue?

17. In future Global Reports on forced labour, it may be possible to explore more deeply its relationship to growth, poverty and inequality. Intuitively, forced labour challenges the value of labour, undermines human capital formation and contributes to the cycle of poverty. Yet its persistence in some circumstances calls for a deeper analysis of how forced labour actually works its downward spiral, and of the effects it has on individuals and communities. The erosion of quality employment and the growth of the undocumented, informal economy must surely make it easier for such practices to occur. A closer look is also needed into the possible negative synergies among forced labour, child labour, discrimination and the absence of freedom of association. This initial report will, it is hoped, stimulate such work in the future.

A serious problem calls for serious action

18. With or without a full statistical picture or in-depth socio-economic analysis, there is certainly still enough evidence to detect a serious problem. Over the years, ILO work has clearly brought this to light. Fortunately, some traditional types of forced labour have been eradicated successfully, through land, labour, civil rights and other social and legal reforms. The elements of this success deserve greater scrutiny. In the promotional spirit of the Follow-up to the ILO Declaration, this Report issues a determined call for intensified international and national action now to help countries around the world stamp out the scourge of forced labour once and for all.

[10] UNDP: *Human Development Report. Human Rights and Human Development* (New York, 2000).

[11] Within the ILO, progress may be made through work being pursued by the International Institute of Labour Studies, the Advisory Group on Statistics and the InFocus Programme on Socio-Economic Security.

Part I. Forced and compulsory labour: A dynamic global picture

1. The evolving faces of forced labour

Forced labour: A precise term

19. As an emotive subject, forced labour has to be approached with some care in the terminology used. The popular media may refer to "modern slavery", associating such a concept generally with abusive working conditions or very low rates of pay.[1] There have been long-standing policy debates over the economic as well as extra-economic aspects of coercive labour arrangements.

20. *Forced labour* is a legal term as well as an economic phenomenon. It will not be possible to "respect, promote and realize" the principle of the elimination of all forms of forced or compulsory labour without knowing what the phrase means. The full definition contains exclusions — but the basic idea is clear enough. It was set out in the first ILO Convention on the subject,[2] the Forced Labour Convention, 1930 (No. 29) (Article 2(1)): "The term 'forced or compulsory labour' shall mean all work or service which is exacted from any person

[1] In the view of one government in its annual report under the Declaration, "Labour may be *forced* not only owing to physical force ... but also owing to hunger and poverty which compels [a worker] him to accept employment for remuneration which is less than the statutory minimum wage". Report by the Government of India. ILO: *Review of annual reports under the Declaration*, Part II (Geneva, 2000), Governing Body doc. GB.277/3/2, p. 200.

[2] At the time of the adoption of the Declaration, the ILO Legal Adviser stated that for purposes of this principle, it was perfectly legitimate, in determining what was understood by the term, to refer to the definition in the Convention, which excluded some situations. ILO: International Labour Conference, 86th Session, Geneva, 1998, *Provisional Record* No. 20, para. 219. The exclusions in Convention No. 29 are "(a) any work or service exacted in virtue of compulsory military service laws for work of a purely military character; (b) any work or service which forms part of the normal civic obligations of the citizens of a fully self-governing country; (c) any work or service exacted from any person as a consequence of a conviction in a court of law, provided that the said work or service is carried out under the supervision and control of a public authority and that the said person is not hired to or placed at the disposal of private individuals, companies or associations; (d) any work or service exacted in cases of emergency, that is to say, in the event of war or of a calamity or threatened calamity, such as fire, flood, famine, earthquake, violent epidemic or epizootic diseases, invasion by animal, insect or vegetable pests, and in general any circumstance that would endanger the existence or the well-being of the whole or part of the population; (e) minor communal services of a kind which, being performed by the members of the community in the direct interest of the said community, can therefore be considered as normal civic obligations incumbent upon the members of the community, provided that the members of the community or their direct representatives shall have the right to be consulted in regard to the need for such services." (Article 2(2)).

under the menace of any penalty and for which the said person has not offered himself voluntarily." The "penalty" referred to need not be in the form of penal sanctions, but might take also the form of loss of rights or privileges.

The changing context of forced labour

21. However, while the legal notion remains constant, the *context* of forced and compulsory labour evolves over time. At the risk of some oversimplification, the following broad characterizations of the international community's main concerns over the forced labour principle during different historical periods illustrate how new problems have given rise to new solutions.

First Conventions on slavery and forced labour

22. By the end of the 1800s, slavery and the slave trade had been outlawed around the world. The 1920s saw first the adoption of the League of Nations' Slavery Convention in 1926, and then the ILO's Forced Labour Convention, 1930 (No. 29). At this time the main issues of concern were the exaction of forced and compulsory labour from native populations during the colonial period. In large areas of the world, colonial administrations used various forms of coercion to obtain labour for the development of communications and the general economic infrastructure, and for the working of mines, plantations and other activities.[3] Discussions centred on the safeguards to be adopted, and the measures needed to secure the abolition of forced labour at the earliest opportunity.

23. The League of Nations' Slavery Convention prohibited all aspects of the slave trade, including "all acts involved in the capture, acquisition or disposal of a person with intent to reduce him to slavery".[4] Contracting parties were also required "to take all necessary measures to prevent forced or compulsory labour from developing into conditions analogous to slavery". The League of Nations requested the ILO to undertake the work that eventually led to the adoption of Convention No. 29 in 1930,[5] an instrument whose continuing relevance has been recently recalled.[6] This Convention required suppression of the use of forced or compulsory labour in all its forms within the shortest possible time.

Second slavery and forced labour Conventions

24. The second major period of standard-setting activity came during the 1950s, when the colonial era was reaching its end and concern over the use of forced labour for political purposes was growing. In the inter-war period and during the Second World War, the world witnessed forced labour being used on a mass scale outside as well as within a colonial setting. These experiences no doubt served as one of the inspirations for the phrase in the Declaration of Philadelphia (1944), that "all human beings ... have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, economic security and equal opportunity".[7] The Universal Declaration of Human Rights (1948) reaffirmed the principle that "no one shall be held in slavery or servitude", as well as the right to "free choice of employment".[8]

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[3] ILO: *Forced labour*, General conclusions on the reports relating to the international labour Conventions and Recommendations dealing with forced labour and compulsion to labour, International Labour Conference, 46th Session, Geneva, 1962.

[4] The 1926 Convention defined slavery as "the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised".

[5] See: *Forced labour*, op. cit., para. 19; N. Valticos: *International labour law* (Kluwer, Deventer, Netherlands, 1979).

[6] *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 1A), International Labour Conference, 89th Session, Geneva, 2001, paras. 84-85.

[7] Para. II(a). The Declaration of Philadelphia, adopted in 1944, has become part of the ILO Constitution.

[8] Arts. 4 and 23(1).

25. By the 1950s, serious new problems were being addressed, many of them of a political or ideological nature, because of forced labour exacted from millions of people consigned to labour camps for political reasons. Moreover, as many countries in Asia and Latin America embarked on redistributive agrarian and land tenancy reforms, there was new momentum to wipe out servile labour systems — the vestiges of the "agrarian feudalism" that had been so widespread in the developing countries at that time. It was in this context that the United Nations adopted its 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices similar to Slavery, calling on all States parties to abolish such practices as debt bondage[9] and serfdom.[10] The following year, the ILO adopted its Abolition of Forced Labour Convention, 1957 (No. 105). It called for the suppression of forced labour as a means of political coercion, labour discipline, or racial, social, national or religious discrimination; as a method of mobilizing and using labour for purposes of economic development; and as punishment for having participated in strikes.[11]

New issues to address

26. The 1950s, 1960s and 1970s saw new issues emerging with regard to freedom of employment, or the compulsion to work. Throughout the Cold War period, vagrancy laws involving an obligation to work in the Communist bloc countries and in some newly independent States, notably in the African region, were a cause for continuing concern.

27. This was also a highly significant period of social reforms in the developing countries, involving in particular land and tenancy reforms, often accompanied by expanded labour rights and some social benefits. Land and tenancy reforms, frequently aimed at breaking up large feudal estates and transferring ownership rights to former tenants or farm workers, did much to eradicate the compulsory labour that had previously been widespread in the traditional agricultural estates of Latin America. Similar reforms were enacted in Asia, but appear to have had less practical success in eradicating debt-peonage and bonded labour systems in parts of this continent. The objectives everywhere were to eradicate the servile and unpaid labour systems which were opposed by modernizers on economic as well as humanitarian grounds, and to replace them by free wage labour systems in the interests of greater social equity and also productive efficiency.

28. The spirit of the time is well reflected by the identification of "full, productive and freely chosen employment" as a major policy goal in the 1960s.[12] The principle of prohibiting forced labour also became anchored in the International Covenant on Civil and Political Rights in 1966. Questions began to arise concerning the propriety of degrees of compulsion that could be used in employment and training programmes in developing and developed countries alike.

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[9] Under this Convention debt bondage is defined as "the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined". (Article 1(a)).

[10] The same Convention defines serfdom as "the condition or status of a tenant who is by law, custom or agreement bound to live and labour on land belonging to another person and to render some determinate service to such other person, whether for reward or not, and is not free to change his status". (Article 1(b)).

[11] Further information on Conventions Nos. 29 and 105 is contained in Annex 4.

[12] Employment Policy Convention, 1964 (No. 122). The period also saw a spate of standard setting on active labour market policies, including human resources development and broader social policies, as well as instruments to promote the rights of tenants and sharecroppers, as well as rural workers' organizations.

Heightened awareness of gender issues and child labour

29. During the 1980s and 1990s there was a growing awareness of gender issues. Greater light was shed on ways in which women in particular could be subject to forced labour, in situations ranging from work as domestic servants to being trafficked into the sex trade. Gender analysis would call as well for an exploration of situations in which men were more likely to be involved in forced labour, as in certain types of work and in certain types of prison labour.

30. The worldwide movement to combat exploitative child labour has already exposed practices involving forced labour that have shocked the human conscience, in situations ranging from domestic service in cities of the developed and developing world to bonded labour in brick kilns. It is no accident that the Worst Forms of Child Labour Convention, 1999 (No. 182) lists "all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict" as one set of the practices prohibited by this Convention.[13] This instrument helps put the spotlight on new ways in which children are involved in forced labour, as well as on traditional forms of exploitation such as the now outlawed *trokosi* practice.[14]

The approach of international financial institutions

31. The recent period has also featured the predominance of the Bretton Woods institutions regarding economic and labour market reforms, structural adjustment, strategies for poverty reduction, decentralization of government and related issues. Whether these policy prescriptions have improved or worsened the situation as regards various forms of forced labour is a matter of speculation, since no serious work has been undertaken in this regard. Closer cooperation between the ILO and the international financial institutions may create space for examining more closely how the elimination of forced labour contributes to development. Surely the recent observations of the World Bank on "sound governance" and the importance of "voice for the poor" would create new openings for seeing the elimination of all forms of forced labour as part of sound and sustainable development. Indeed, institutions of the World Bank group have, with advice from the ILO, issued guidelines intended to preclude forced labour practices by their own contractors.[15] Similarly, the Inter-American Development Bank group has recently evidenced support for core labour standards, including the prohibition of forced labour.[16]

Solid consensus on the principle

32. As a peremptory norm of international law, the proscription of slavery and slavery-like practices constitutes a principle recognized by the international community as a whole. Looking at ratifications of the relevant ILO instruments, the principle of eliminating forced or compulsory labour as expressed in Conventions Nos. 29 and 105 has attracted a very high degree of international acceptance. They are the most highly ratified of the fundamental Conventions

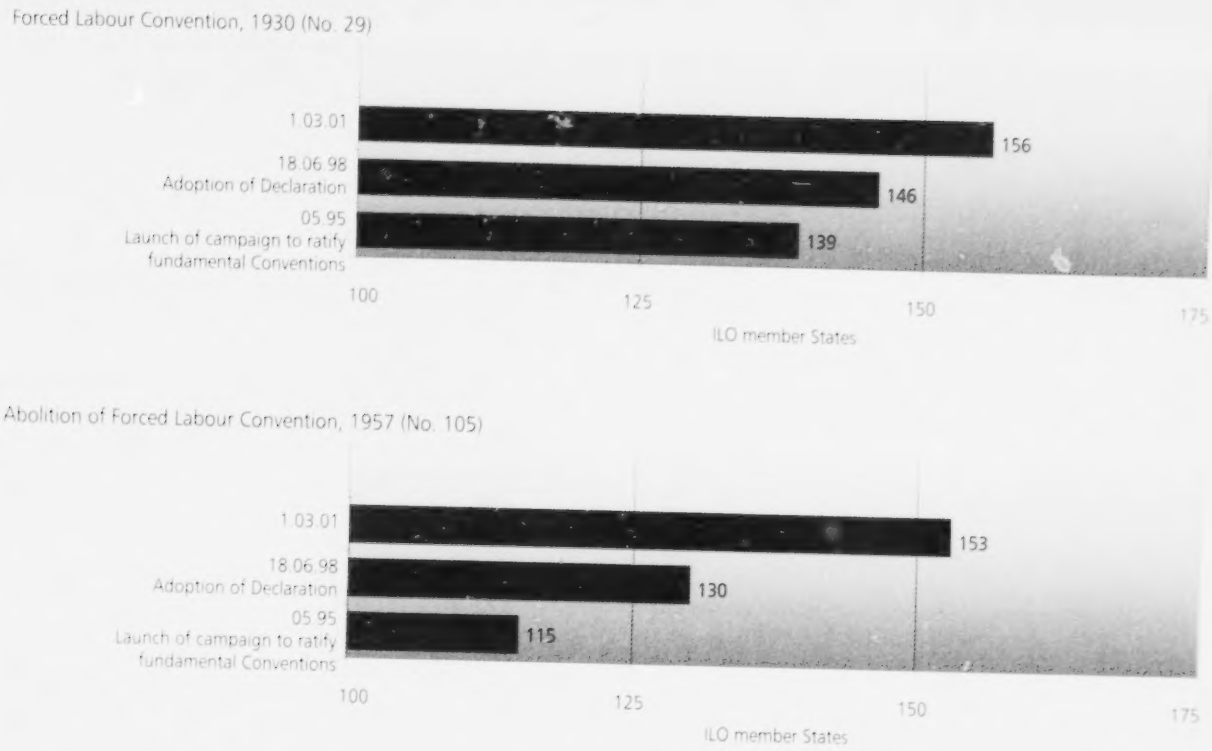
[13] Art. 3(a). The principles and rights derived from this Convention and from the Minimum Age Convention, 1973 (No. 138) will be the theme of the next Global Report, to be discussed at the 90th Session of the International Labour Conference in 2002.

[14] Ghana reported that the Criminal Code was amended in 1998 to outlaw this traditional practice, which involves a young girl becoming the property of the fetish priest and labouring for him in order to atone offences committed by a member of her family. (Government report under the ILO *Review of annual reports under the Declaration*, Part II (Geneva, 2001), Governing Body doc. GB.280/3/2).

[15] The International Finance Corporation and the Multilateral Investment Guarantee Agency have taken this step. See for instance the IFC Policy Statement, March 1998, at www.ifc.org/enviro/enviro/childlabor/child.htm [visited 12 Jan. 2001].

[16] The Inter-American Investment Corporation and the Inter-American Development Bank's Private Sector Department adopted policies of this nature in 1999.

Figure 1.1. Progress in ratification



(figure 1.1).[17] Surely this consensus can support a renewed resolve to stamp out the new and old forms of this practice.

33. The ILO Declaration is about principles and rights, not specific provisions of Conventions. In the context of forced labour, a number of ILO instruments can provide policy guidance for the creation of conditions to foster the elimination of all forms of forced or compulsory labour. These range from the promotion of freely chosen employment to the encouragement of sound recruitment practices (see Annex 4).

State and non-state actors

34. With coercion at the heart of forced labour, the principle of eliminating it applies irrespective of whether the perpetrators are acting officially, as agents of the State, or unofficially as private individuals. The ILO's two forced labour Conventions were adopted in a global context in which the State was seen as being the party primarily involved in the exaction of forced labour, although they did not exclude from their coverage situations where non-state actors could be involved.[18] Against a background of international concern about certain aspects of forced labour today, the agents of coercive labour practices are

[17] Only 10 of the ILO's 175 member States (Armenia, China, Equatorial Guinea, Kazakhstan, Kiribati, Mongolia, Nepal, Republic of Korea, Sao Tome and Principe, Viet Nam) had, by 1 March 2001, ratified neither Convention No. 29 (155 ratifications on that date) nor Convention No. 105 (152 ratifications on that date). See Annex 3 for details.

[18] Convention No. 29 provides that the competent authority shall not impose or permit the imposition of forced labour for the benefit of private individuals, companies or associations. It also stresses that the illegal exaction of forced labour shall be punishable as a penal offence, and that it shall be an obligation on any member State to ensure that the penalties imposed by law are really adequate and are strictly enforced.

Box 1.1
National courts to the defence of forced labour victims: A few examples out of millions

Ruling against the managers of a fish-processing company, the Indian High Court in Bombay (India) found that they had treated a worker as a bonded labourer by confining her to factory premises and even dragging her back when she tried to escape. She had migrated to a large city from a rural area. Her experience led to an investigation of conditions at the workplace, where other instances of forced labour were found. She was awarded compensation and the court ordered continued monitoring of the situation and free access to the workplace for a workers' organization.

In the United States, a federal court convicted traffickers on charges of alien smuggling and of subjecting some 70 labourers from Thailand to involuntary servitude. The women workers, from impoverished backgrounds and with little education, had been incarcerated in a clandestine garment factory that was surrounded by high walls topped by razor wire and patrolled around the clock by sentries. The fruits of their work went to paying off so-called debts. The perpetrators received prison sentences of up to seven years, and the court awarded the sum of US$4.5 million to the victims.

While it is heartening that victims of forced labour can obtain relief in the courts, it is a long road to get to this point, calling for much perseverance. How much better it would be to keep forced labour situations from occurring in the first place.

very often not the State and its institutions, but rather private individuals or enterprises acting with impunity from the State and its law enforcement institutions. Yet whether as a direct actor or by acquiescing to behaviour of individuals subject to its jurisdiction, the State remains responsible if forced labour is not prevented or punished. Contemporary developments in international law provide further support for such judicial action. Using domestic law, national prosecutors and courts have played an important role in punishing persons who engage in forced labour and in compensating their victims (see box 1.1).

35. Another important development of late is less encouraging: an explosion in the number of persons trafficked across national borders and continents, and then forced into activities including sweatshop labour, domestic service and even prostitution.[19] This is often a form of contemporary debt bondage, where the persons involved — and sometimes their families — have to pay off the expenses advanced to them for their illegal transport and immigration. While international concern over trafficking is not new, the magnitude of the problem is.

Rural population and domestic workers especially at risk

36. Similar kinds of coercion have been used in other types of activity, often in the rural sector. After money has been advanced, there can be varying kinds of restriction on the freedom of the worker to terminate employment, or even to leave the workplace. Such coercive practices may by no means be new. Advances by recruiting agents to poor rural workers, in order to secure a cheap labour supply for the harvest season or to work in urban households, have long been a feature of the agrarian systems of some developing countries. The practice of confiscating domestic workers' identity documents to prevent them from running away from hard work with excessive hours has long been condemned as an abusive labour practice.

37. It is disturbing that such practices can survive in a modern wage economy, and in certain cases may even be growing. Where remote areas of a country are opened up for agricultural, forestry or mineral development, workers have been transported there from poorer regions, often lured by a monetary advance. This can translate into conditions of debt bondage. Some governments have had to

[19] The recognition that persons may be compelled into engaging in prostitution as an economic activity in no way suggests that the ILO endorses it.

undertake special programmes to rescue and release the victims in remote rural areas. However, despite the existence of national laws to punish offenders, there have been very few cases of successful convictions.

Why is trafficking in drugs punished more severely than trafficking in human beings?

38. The kinds of forced labour described above might be attributed to various types of failure in labour markets and financial markets, and of asymmetries of information. The State's incapacity to enforce its own legislation can be addressed in part by strengthened labour inspection. But when forced labour is illegally and violently exacted through various forms of criminal activity, it is clear that the appropriate response exceeds the capacity of the labour authorities alone. The Second International Conference on Trafficking in Women and Illegal Immigration convened by Interpol in November 2000 called for a series of cross-border efforts to increase the number of successful prosecutions of the criminals involved. It also posed a disturbing question: Why does drug trafficking draw stiffer penalties than trafficking in human beings? And when the victims of trafficking are themselves treated as criminals, they are unlikely to come forth with denunciations.

39. The exaction of other forms of contemporary forced labour can involve a responsibility of the State that is more direct than law enforcement, however. The use of forced labour to punish political dissent and persons exercising freedom of association is not yet a thing of the past. Non-democratic regimes may rely upon forced labour for infrastructure development. For persons in certain occupational categories, a State, such as **Iraq**, may impose restrictions on leaving employment. Students' inability to pay for their vocational education may lead some to seek financing from a future employer, for whom they then must work to pay off the debt.[20] And then there are the circumstances and conditions in which persons incarcerated upon conviction by the State may perform labour for private companies or individuals in either publicly administered or privately run prisons — an issue raising its own questions about labour market implications. These matters all form part of the dynamic global picture on forced labour.

A focus on structural concerns

40. Given the promotional nature of the Declaration, the main emphasis in this Report is placed on structural concerns that might be tackled through a future programme of technical assistance. With that in mind, the typology of forced labour used here is thematic, though certain problems appear to be most acute in particular regions. In all parts of the world, there is a need for more complete data that are sensitive to gender, ethnic and racial dimensions, and a deeper analysis of the various phenomena of forced labour and its relationship to development. The Report highlights positive measures taken by individual countries and intergovernmental organizations to identify and tackle the problems of forced labour. These in turn form the springboard for identifying possible elements for an action programme aimed at eliminating forced labour around the globe.

[20] B.C. Amoussou, *Etude nationale pour l'identification des obstacles de la mise en oeuvre effective des principes et droits fondamentaux au travail au Bénin* (Cotonou, 2000), p. 52.

2. Slavery and abductions: A continuing problem

The problem of abductions

41. The physical abduction of persons for forced labour purposes is certainly not as common in the modern world as it was before slavery became outlawed. Relatively rare contemporary cases have nevertheless been detected, most particularly in parts of Africa. Three examples are highlighted here — **Liberia**, **Mauritania** and **Sudan** — although abductions have also occurred in other conflict-torn societies. Abductions may take place in the context of traditional rivalries, as in Mauritania, or in out-and-out armed conflict as in Liberia, Sudan and elsewhere. The release and rehabilitation of former slaves thus becomes a key element in national reconciliation. Breaking the cycle of forced labour in a conflict situation may also influence its course, given that the fruit of that labour may be helping to sustain the fighting. Will international measures to stop trade in diamonds extracted by miners who are pressed into service by parties to the conflict in **Sierra Leone**, for instance, help achieve a lasting peace and the liberation of slaves quickly?

Legal frameworks need support

42. In **Mauritania**, traditionally, members of Arab or Berber tribes captured black slaves in the south, bringing them north to carry out heavy agricultural and domestic work. While some were already released during the colonial period, and others escaped or purchased their freedom, it is estimated that hundreds of thousands of Mauritanians were still enslaved by the time of independence in 1961. The new Constitution then abolished slavery. A further Declaration of July 1980 proclaimed the abolition of slavery. However, there is no specific unit of government designated to coordinate the struggle against slavery and no adequate monitoring of the situation of freed slaves; hence suggestions that slavery and slavery-like practices persisted were still being made in 1997.[21]

43. The Government has referred to a policy for the integration of descendants of former slaves as well as to measures to combat illiteracy and promote school attendance, access to land and integration into the political hierarchy

[21] ILO: *Report of the Committee of Experts on the Application of Conventions and Recommendations* (subsequently referred to as *Report of the Committee of Experts*), Report III (Part 1A), International Labour Conference, 88th Session, Geneva, 2000, pp. 104-105. A communication received from the World Confederation of Labour (WCL) mentions the persistence of practices equivalent to slavery, despite the Declaration of 1980 abolishing slavery.

and administration of the State.[22] Recently, under an ILO Declaration technical cooperation project funded by **France**, a legal and economic assessment of the country's situation in relation to the four categories of fundamental principles and rights at work was launched to provide the Government and the social partners with a clear picture of how matters now stand and what action may need to be taken.

Resurgence in times of armed conflict

44. In **Sudan** there are some historical parallels with **Mauritania**, in that traditional forms of slavery can be attributed to old tensions between the peoples of the northern and southern parts of the country. A United Nations Special Rapporteur has referred to an "age-old pattern of rivalry and confrontation" between the different ethnic groups; during fighting, "both sides traditionally captured prisoners whom they reduced to slavery unless or until they were redeemed through ransom".[23] A major concern is that these practices have been revived since the onset of Sudan's present-day civil conflict.

45. UNICEF estimated in May 2000 that between 5,000 and 10,000 persons altogether had been abducted in Sudan since the start of the conflict in 1983. In the past two years, both the World Confederation of Labour (WCL) and the International Confederation of Free Trade Unions (ICFTU) have sounded the alarm over continuing reports of abductions and slavery.[24]

46. The Government of Sudan, following criticism that it had permitted Arab tribesmen to kidnap and enslave civilians in the war-torn southern region, established a Committee for the Eradication of Abduction of Women and Children (CEAWC) in May 1999 (see box 2.1). The foreign ministries of **Canada** and Sudan also undertook an assessment mission in January 2000 to examine human security in the African country. Its report identified both official and non-official perpetrators of abductions.[25] The ILO has had indications that the Government would like to move forward to resolve the continuing problems.

Recommendations for reconciliation in Liberia

47. In October 1998 the ICFTU communicated a report by two national organizations, Focus and the Justice and Peace Commission (JPC), concerning forced labour involving children in the south-eastern region of **Liberia**. Forced labour was identified as "a spillover of the gross abuses that characterized the civil war", with ex-combatants and commanders of former warring factions taking advantage of the difficult economic situation in the region. Socially abandoned children were reportedly held hostage by adults and used as a source of forced and captive labour.

48. The Government appointed a special committee in May 1998 to investigate the allegations. Though not establishing conclusive evidence of forced labour in the region, it recommended that a national committee be established to trace and reunite the displaced women and children taken captive during the war; and that allegations of forced labour and hostage situations be further investigated in certain districts. And to enhance national reconciliation and reunification programmes, local authorities should be directed to encourage citizens to report any acts of alleged forced labour.[26] In a recent report, the Government stated that the recommendations had been implemented, and that it hoped that draft legislation making forced labour a crime would soon be passed.

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[22] *Ibid.*, 1994, p. 114.

[23] United Nations: *Situation of Human Rights in Sudan*, New York (doc. E/CN.4/1999/48/Add.1, 17 May 1999), para. 62.

[24] *Report of the Committee of Experts*, 88th and 89th Sessions, Geneva, 2000 and 2001.

[25] *Ibid.*, 89th Session, 2001.

[26] CEAWC: *Human rights of women and children in Sudan* (CEAWC, Khartoum, 2000).

Box 2.1
Action against abductions in Sudan

The aim of the Committee for the Eradication of Abduction of Women and Children (CEAWC) is to stop the abductions and to address the root causes of the problem. Measures have included the compilation of a detailed registry of cases, in order to identify, trace and reunify targeted numbers of women and children over a short period of time. CEAWC has the authority to arrest suspected offenders and bring them to trial, as well as to undertake investigations and searches. However, CEAWC has preferred a participatory process involving representatives of the communities that have carried out the abductions. To facilitate its work, CEAWC has appointed as liaison officers high-ranking officials from the army and police, security and prosecution offices, and local authorities. In its report for the May 1999-June 2000 period, CEAWC stated that it had documented 1,230 cases of abducted women and children, of whom 353 have been reunified with their families.[27] A further 500 persons have been released and moved to transit centres, although there is some debate as to these figures.

Noting that the region had now been linked by road to other parts of the country, it reported that commercial activities and farming were booming.[28] Indeed, the creation of such alternatives can reduce the risk of people falling back into forced labour situations.

Conflict, ethnicity and forced labour

49. The coincidence of traditional forms of slavery with ethnic divisions suggests a linkage between eliminating forced labour and eliminating discrimination in societies. In addition to the examples just cited, there have been suggestions of traditional forms of slavery involving forced labour by Pygmies and Bantus in the **Congo**.[29] Eliminating forced labour and resolving conflicts must go hand in hand, as better understanding of one can assist in tackling the other.

[27] *Report of the Committee of Experts*, 2000, pp. 101-103.

[28] Report of the Government of Liberia under the ILO *Review of annual reports under the Declaration*, Part II, 2001.

[29] *Report of the Committee of Experts*, 2001.

3. Compulsory participation in public works

Traditional communal practices

50. In a number of societies, able-bodied individuals have been required to participate in certain aspects of community or even national development. In any discussion of forced labour and development, the role of traditional authority systems is bound to arise. Many communities have a long-standing tradition of participatory voluntary labour, including the reciprocal arrangements in which families assist each other in agricultural and other tasks. The contemporary relevance of such situations is seen mostly in Africa and Asia, although it may exist elsewhere. However, designating practices such as "minor communal services" or "normal civic obligations" should not mask situations that are in fact forced labour.

Compulsory labour and economic development in Asia

51. In parts of Asia, there have been requirements for compulsory participation in public works. It has sometimes been argued that there is cultural acceptance of the practice as a contribution to rapid economic development. Such views were expressed by the Government of **Myanmar**, for example, in the context of the ILO Commission of Inquiry findings of widespread and systematic resort to forced labour in that country.

52. In its initial annual report under the follow-up to the Declaration, the Government of **Viet Nam** observed that "for the Government and the ILO, there are differences of definition of forced labour and public works duties for the citizens of Viet Nam". Under legislation enacted in January 2000, all adult men under the age of 45 and all adult women under 35 have been required to provide ten days of community service per year. Following criticism of the use of community service conscripts in road construction, Viet Nam drew up new regulations in October 2000 to provide for the payment of minimum wages and national insurance contributions for all persons engaged in road construction under the community service programme; nonetheless, this does not alter the underlying issue of the compulsory nature of the work.

53. Similar developments have recently been reported in **Cambodia**. A measure adopted in February 1994 had provided for up to 15 days per year of compulsory labour for irrigation works. This was repealed in July 2000 by provisions calling for one day per year of manual hydrology work for all adult citizens, but on a voluntary basis. Gradually, understanding is increasing

that economic development is retarded rather than helped by forcing people to work under threat of a penalty.

Compulsory cultivation in Africa

54. In a number of African countries, national legislation or local by-laws still provide for some form of compulsory cultivation, or other forms of compulsory labour and services. This is the case, for instance, in the **Central African Republic**,[50] **Kenya**,[51] and **Sierra Leone**,[52] as well as the **United Republic of Tanzania**, where the 1985 Constitution, while prohibiting forced labour, also provides for a general obligation to work. The Tanzanian Government has begun to address some concerns expressed over this and has proposed law reforms. In **Swaziland**, the Swazi Administration Order of 1998 provides for compulsory cultivation, anti-erosion work and road works, with severe penalties for non-compliance. The Government has been asked to take steps to bring the Order into line with Convention No. 29, which it has ratified.

[50] Whereas 40-year old legislation (Act No. 60/109 of 27 June 1960) provides for minimum surfaces for cultivation to be established for each rural community, the Government has indicated that compulsory cultivation no longer exists in practice.

[51] Under the Chief's Authority Act, able-bodied males between 18 and 45 years of age may be required to perform work or service in connection with the conservation of natural resources for up to 60 days in any year. In this country, the Government has affirmed its intention to repeal the legislation.

[52] Compulsory cultivation may be imposed under the Chiefdom Councils Act, though the Government has stated that this law is not applied in practice.

4. Forced labour in agriculture and remote rural areas: Coercive recruitment practices

Resurgent debt bondage

55. Systems of peonage and serfdom have for the most part been successfully eradicated over recent decades. Other forms of coercion and compulsion have however been detected. Rural workers can still be locked into debt through advances made by recruiting and transporting agents, who are often independent contractors supplying a labour force for landowners or other forms of rural enterprise. In isolated areas, workers have no choice but to incur further debt for food and other necessities supplied by the landowner or contractor, or accepting goods in lieu of wages (the so-called "truck system"). Physical restraint and force is often used against the rural workers caught up in such debt bondage situations. Sometimes debts run up to finance dowries, weddings and funerals and other ceremonies that have to be paid off by cultivating crops.[33]

Isolation invites abuse

56. Serious problems exist in remote areas; for example, tropical forests have been opened up for agricultural, mineral or forestry development. The persons susceptible to abuse may be indigenous and tribal peoples. A common feature tends to be that these workers end up very far from home, often in inhospitable and inaccessible tropical areas. This isolation increases their vulnerability to abuse, and lessens the chance of effective redress through formal sector law enforcement institutions, trade union representation or community networks. Thus the problems of coercion are often connected with seasonal labour migration, both within and across national frontiers. The migration may be to jobs in agriculture, forestry, processing of food products or materials, or domestic work but all risk ending up in debt bondage.

Children affected

57. There have been quite widespread reports of forced labour on the agricultural plantations of West Africa, affecting children in particular. In **Côte d'Ivoire** for example, there is information on children being forced to work on plantations; this affects in particular those hailing from certain

[33] B.C. Amoussou, op. cit.

ethnic groups within the country as well as from **Mali** and **Burkina Faso**.[34] It has been estimated that between 10,000 and 15,000 children from Mali are working on plantations in **Côte d'Ivoire**,[35] but the problems are more generalized throughout the region. **Benin** and **Togo** are other countries where they have been detected. Sometimes the desire for a better life for their children leads parents to entrust their girls to another family where, instead of being sent to school, they then perform household tasks. The system is known under different names: *restavek* in **Haiti** and *vidomegon* in **Benin**, for example. It can involve trafficking of children over borders for this purpose. Abuses have also been reported whereby boys are placed in informal Koranic schools in Africa: the masters, having promised to provide religious instruction, then compel them to work long hours and beg on the street.[36] It is Latin America, however, that provides the richest source of information on forced labour in rural settings.

Forced labour and Latin America's indigenous peoples

58. Though rural serfdom has been largely eradicated, pockets of virtually unpaid labour with service obligations have still been detected in Latin America — for example in parts of **Guatemala** and **Mexico** and in the Amazon region of **Peru**. In Mexico, the National Indigenous Institute (INI) has referred to serious abuses against mainly indigenous workers in the rural sector, including allegations of the coercive form of recruitment known as "*enganche*", under which indigenous workers are provided with the means of subsistence through a debt that has to be paid off by producing goods and services.[37]

59. In the Andean countries too, indigenous peoples have been particularly affected by forced labour in rural areas. In **Peru**, for example, this has been detected in parts of the Amazon basin. The World Confederation of Labour has referred to practices of slavery and debt bondage affecting indigenous peoples, especially in the Atalaya and Ucayali regions.[38] In the Peruvian Amazon a joint inspection programme has been coordinated between the judicial authority, police, and a number of government agencies. They have found that most indigenous people in riverside areas have been employed in logging activities, working for employers who pay for their services in food and clothing. The Government has informed the ILO that it is applying appropriate sanctions for such infractions, and that monitoring by labour authorities continues. Yet perhaps of greater importance has been the land titling programmes undertaken in the region, holding out prospects of guaranteeing indigenous livelihoods in the longer term (see box 4.1).

Abusive recruitment practices

60. From available information on rural labour markets in Latin America, it would appear that present-day systems of recruitment through intermediaries represent an evolution of the traditional forms of *enganche* recruitment that have existed in different forms in the region for many decades. One ILO

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[34] *Report of the Committee of Experts*, 1999 and 2001.

[35] UNICEF, *Report of the sub-regional workshop on trafficking in child domestic service in West and Central Africa* (Abidjan, UNICEF, p.199).

[36] UNICEF/World Bank: *Le placement des enfants au Bénin: entre tradition et "modernité"* (Abomey, 2000); Report of the Government of Gambia under the ILO *Review of annual reports under the Declaration*, Part II, 2000; information from ILO field offices regarding Benin, Burkina Faso, Côte d'Ivoire, Niger, Senegal and Togo.

[37] *Report of the Committee of Experts*, 1996.

[38] Working to pay off recruitment-related debts that may be either short term or more permanent, workers are forced to live within the confines of a *hacienda*. A multisectoral committee (created by resolution 083-88 PCM on the situation of indigenous communities in Atalaya) found that certain communities were subjected to debt bondage on large and medium-sized agricultural and forestry estates, and constituted an unpaid or only partly paid workforce. Once again, the mechanisms of bondage were advance payments through the "*enganche*" system.

Box 4.1
Land titling: "From slavery to democracy"

A recent study for the Inter-American Development Bank observes that a large-scale land demarcation and titling project in the Ucayali region of Peru secured land titling for over 160 native communities by 1995. This covered over 1.5 million hectares in contiguous territorial areas, benefiting over 20,000 indigenous inhabitants.[39] And independent studies show how the land titling programmes have paved the way for sustainable economic and social development, in what one analyst has termed a transition "from slavery to democracy".[40]

study on seasonal rural workers in Latin America[41] suggests that the debt factor may be far less important than previously in these recruitment systems. For indigenous workers, however, advance payments are still used in order to induce indebtedness before the harvest season.

61. Similar recruitment methods appear to be used in a number of Latin American countries where indigenous peoples perform much of the seasonal labour in commercial agriculture. Landowners have recourse to independent labour contractors *(contratistas)* who make advance payments *(anticipios)* at times of scarcity in peasant communities. In **Guatemala**, research in the mid-1990s found that the majority of recruitment was carried out in this way. Sometimes indigenous peoples themselves received commissions for each worker recruited despite the prohibition of this practice by law; and advance payments were widespread.[42]

62. In **Bolivia**, current ILO research on indigenous (internal) migrant labour in the sugar harvest finds a similar pattern, with these people being locked in a cycle of debt bondage. Contracts are verbal, and although labour contractors *(contratista* or *enganchador)* are expressly prohibited by law, they remain the key intermediaries. Cane-cutters may borrow the monetary equivalent of 40 tonnes of sugar at the beginning of the harvest and it is difficult for them to pay off their debts by the end of the four-month harvest. Thus indigenous workers tend to request another loan at the end of the harvest, under the promise of returning the following year.[43]

Haitian workers in the Dominican Republic

63. Sugar cane production was also the setting of one of the most widely documented instances of coercive labour contracting over the past two decades: that of Haitian migrant workers in the **Dominican Republic**. The supplier country, **Haiti**, has long been the poorest in the western hemisphere, and peasants from the most eroded and impoverished parts of the country desperately need cash incomes. In the receiving country, the **Dominican Republic**, the bulk of sugar cane production was — until its recent privatization — in the hands of state-owned plantations and sugar mills run by the State Sugar Board (CEA). As the two countries share the same Caribbean island of Hispaniola, there is widespread illegal movement

[39] R. Plant and S. Hvalkof: *Land Titling and Indigenous Peoples* (Washington, DC, Inter-American Development Bank, 2000).

[40] S. Hvalkof: "From slavery to democracy: The indigenous process of Upper Ucayali and Gran Pajonal", in P.G. Hierro, S. Hvalkof and A. Gray, *Liberation through Land Rights in the Peruvian Amazon* (Copenhagen, 1998, International Working Group for Indigenous Affairs).

[41] S. Gomez and E. Klein: *Los Pobres del Campo: el Trabajador Eventual* (Santiago, 1993, FLACSO-PREALC).

[42] R. Plant: *Rebuilding Civil Society: Rural Workers' Organizations in Guatemala*, Issues in Development Discussion Paper No. 5 (Geneva, ILO, 1995).

[43] M. Villavicienco: *Trabajo forzoso u obligatorio entre los trabajadores de la areas rurales de Bolivia* (Background paper prepared for the ILO, Oct. 2000).

Box 4.2
New Dominican Republic-Haiti agreement on labour contracting

The Governments of the Dominican Republic and Haiti, on 23 February 2000, signed a declaration on the contract conditions applicable to their nationals, with a view to suppressing clandestine recruitment and illegal migration. It calls for the conclusion of contracts of employment in conformity with the national law of the receiving country and applicable international conventions. The accord also foresees a system of work permits and measures to combat illegal immigration. The parties agree to protect migrant workers on an equal footing with nationals. In addition, they have agreed to promote information campaigns to prevent these workers from falling prey to exploitation, trafficking or illegal activity.

across their common border. In February 2000, the two governments signed an accord to address the problems this has entailed (see box 4.2).

Practices unveiled through ILO supervisory procedures

64. In the early 1980s an ILO Commission of Inquiry concluded that forced labour had been exacted from all categories of Haitian workers, and that in the case of the annually contracted workers the Governments of both **Haiti** and the **Dominican Republic** bore responsibility.[44] It was revealed that if Haitian workers left the plantation to which they had been assigned before the end of the harvest season, the action taken by the employer and the authorities frequently consisted of forcible return of the workers to their place of work. As late as 1996, Dominican trade union organizations continued to allege forced labour practices.[45]

65. The Government of the **Dominican Republic** has taken a number of steps to improve the situation:

- moving against intermediaries who were engaged in improper recruitment;
- introducing written contracts of employment;
- agreeing with the trade unions to provide for observers when the sugar cane is weighed;
- changing the ticket system from a monthly to a weekly basis;
- assigning labour inspectors directly to the six plantations concerned, with an emphasis on the supervision of working hours and wage payments; and
- revising the Labour Code, with ILO assistance, taking into account the past difficulties encountered.

By the year 2000 it was clear that the number of Haitians entering the **Dominican Republic** on an annually contracted basis for the harvest was diminishing in favour of a huge flow of undocumented migrants. By most accounts, there has been a reduction in direct coercion against imported

[44] Following an initial complaint against the two governments in 1981, alleging the non-observance of both of the ILO's forced labour Conventions, this case has long attracted the attention of the ILO's supervisory bodies. The allegations covered several different categories of Haitian migrant workers in the Dominican Republic, namely: Haitian workers under recruiting contracts concluded annually between the State Sugar Board of the Dominican Republic and the Government of Haiti; Haitian workers who entered the Dominican Republic illegally in search of work; and Haitian workers resident in the Dominican Republic, in most cases without legal status. See ILO: "Report of the Commission of Inquiry to examine the observance of certain international labour Conventions by the Dominican Republic and Haiti with respect to the employment of Haitian workers on the sugar plantations of the Dominican Republic", *Official Bulletin*, Special Supplement, Vol. LXVI, Series B (Geneva, 1983).

[45] See *Report of the Committee of Experts*, 1998, referring to comments on the application of Convention No. 105 submitted by several Dominican trade unions.

Haitian migrant workers in recent years. This may be attributed in part to the declining importance of the sugar industry as a source of foreign exchange, and also to its structural changes.[16] But to a great extent some of the changes have been spurred by the concern shown by the ILO and its constituents in identifying the problem and pushing for the elimination of forced labour on this Caribbean island. The political will of the governments involved has been vital for continuing the process as part of their development efforts.

Addressing forced labour in rural Brazil

66. Forced labour is concentrated in selected sectors. The Government of **Brazil** is among those showing signs of taking the matter of forced labour seriously. Forced labour allegations have received much attention in Brazil over the past decade. In many instances the practices can be attributed to abuse of labour contracting systems, in a country where there is widespread recourse to these contractors (known locally as *empreiteiros* or *gatos*). On a number of occasions since the 1980s both Brazilian and international trade unions have alleged that thousands of workers, including children and young persons, are subjected to forced labour in various sectors of the economy.

67. Instances of forced labour have related on the whole to mining and to seasonal work in forest clearance, charcoal production, and a range of agricultural activities including cane-cutting, grass-seed sowing, and cotton and coffee harvests. The seasonal work takes several forms. First there are the migratory movements from state to state within Brazil, in which workers are effectively trafficked by *gato* intermediaries from areas with deep pockets of poverty affected by seasonal unemployment or drought. They are ferried in trucks or buses to destination sites hundreds or thousands of kilometres away from their homes.

68. Second there are the unskilled rural workers known in Brazil as the *peao-de-trecho*, who have become caught up in the cycle of debt bondage, have lost contact with their families and are in continual transit from one exploitative labour situation to another. They become dependent on hostels where they stay between jobs, and where alcohol consumption is rife. Such hostels may serve as recruitment points, working in league with the *gatos*. Hostels can sell the workers' debts to the *gatos*, who take the workers to the agricultural estates. Breaking the cycle of the *peao-de-trecho* has proved particularly difficult. Many of those freed from situations of forced labour have had no alternative than to return to the hostels and accept similar offers from the *gatos*.

69. A third type has concerned the involvement of entire families in charcoal production. These families have moved to areas of tree-felling, building kilns to burn the wood and transform it into charcoal, which is then sold to intermediaries for pig iron and steel production. The remoteness of the areas, in which families are dependent on intermediaries for food and transport, once again creates the conditions for fraud and debt bondage. The mobility of charcoal workers makes it particularly difficult for inspection services to monitor their labour conditions.

Indigenous people at high risk

70. Finally, indigenous people are particularly vulnerable to coercive labour conditions when outside their own communities. Though indigenous people account for an infinitely smaller proportion of the labour force of

[16] The Dominican Government has reported that many migrant workers of Haitian nationality are now employed in the construction and agricultural sectors.

Brazil than in some neighbouring Latin American countries, their conditions of recruitment have been a cause of concern for labour inspection services.

71. The main feature of forced labour in Brazilian rural areas is the use of the debt mechanism to immobilize workers on estates until they can pay off debts which are often fraudulently incurred. It is a clandestine and illegal activity, difficult to combat because of various factors — not least of which are the immense size of the country and the difficulty of communications. Constraints on rural workers have included the imposition of debts for transport, food and working tools; the retention of identity documents and work papers; and the use of physical threats and punishment by armed guards, including in some cases the killing of those who attempted to flee.

72. Moreover, according to federal inspection teams, some 80 per cent of those persons rescued from situations of forced labour have no official documents, birth certificates or identity papers. They may not figure in official population statistics, or be addressed by any of the Government's social programmes, and tend to be illiterate.

Dimensions of forced labour: Available statistics

73. Official statistics are available regarding the workers rescued from forced labour situations in Brazil during federal labour inspection raids. Inevitably, these cannot capture the full dimensions of the problem. Table 4.1 indicates the operations of the Special Mobile Labour Inspection Unit over the 1995-2000 period, covering the number of operations, workers rescued, and arrests made.

74. Between 1980 and 1991, the Brazilian Association of Labour Inspectors (AGITRA) documented 3,144 cases of persons subjected to forced labour on 32 estates in the southern part of the State of Pará. AGITRA observed at the time that forced labour was increasing enormously in the country, while labour inspection was dwindling. Despite the deficiencies in official statistics, the overall number of those caught up in forced labour may have diminished over the past decade. Current operations to free workers from conditions of forced labour in forest clearances, for example, have encountered far smaller numbers than in the past. The many obstacles to be surmounted before a complaint is acted upon may explain why official statistics on rescued workers can underestimate the gravity of a far larger phenomenon.

Table 4.1. Brazil: Operations carried out by the Special Mobile Labour Inspection Unit, 1995-2000

Year	No. of operations	No. of raids in which workers were rescued	No. of workers rescued	No. of arrests
1995	12	3	150	11
1996	28	2	288	0
1997	21	1	220	0
1998	18	6	119	2
1999	19	7	639	2
Jan.-July 2000	11	4	418	0
Total	109	23	1,834	15

Source: Ministry of Labour and Employment, Brazil, August 2000.

A range of government initiatives to fight forced labour

75. The Government of **Brazil** has taken a series of measures since the early 1990s to combat forced labour in agricultural and forestry activities in the Amazon and other remote regions. In 1992 a Programme for the Eradication of Forced Labour (PERFOR) was established, under which agreements for cooperation were signed between different institutions. In 1995 a more systematic programme of action was undertaken through the Executive Group for Curbing Forced Labour (GETRAF), an interministerial body.[47]

76. A further government initiative has been the creation of a Special Mobile Inspection Unit at national level, to respond to denunciations of forced labour. This Mobile Unit was set up following recognition of the political pressures on local regional inspection teams, which had prevented them from responding adequately to denunciations. Local labour inspectors were considered to be more vulnerable to security risks when following up allegations of forced labour.

77. The Special Mobile Unit was therefore established within the Labour Inspection Secretariat of the Ministry of Labour.[48] Regular evaluations of the operations of this Unit have pointed to two main criteria for effectiveness:

- centralized organization; and
- absolute secrecy in planning.

Any attempts to decentralize activities have proved unsuccessful, in that news of inspection raids has invariably reached landowners in advance, enabling them to disperse workers or to cover up the situation.

State and local initiatives complement federal efforts

78. The investigative work of the federal Special Mobile Inspection Unit has also been picked up on at the local and state level. The municipality of Vila Rica, in the State of Mato Grosso do Sul, set up a commission with the participation of the Mayor's office and municipal council, and the agricultural producers' and rural workers' organizations. Upon receiving forced labour allegations, the commission has negotiated with local landowners and intermediaries. The very threat of calling in the Mobile Unit, and the prospect of fines, tended to facilitate negotiations. The Mobile Unit was only brought in if such negotiations broke down. State-level efforts to combat forced labour have also been important (see box 4.3).

Action by workers' organizations

79. Brazilian trade unions have also played their role in raising awareness about forced labour, and in creating support mechanisms. A study of rural migration carried out by the Agricultural Workers' Federation in 1995-96, supported by the Ministry of Labour together with the UNDP, highlighted the risk of migrant workers being caught up in situations of forced labour. In Piaui State the Rural Workers' Union of Pimenteiras, after securing the rescue of some 50 workers from forced labour conditions on a sugar plantation in the late 1980s, set about preventing a recurrence. It negotiated with the recruiting agents for the *gatos* that no one would leave the town without having their names and identity numbers, as well as the details of the *gatos* themselves, being registered with the local police. In the early 1990s a similar

[47] GETRAF is coordinated by the Ministry of Labour, with representatives from several other government agencies and the Federal Police. While GETRAF's mandate includes the coordination of major programmes for the prevention of forced labour, its activities and meetings appear to have fallen off in recent years.

[48] Located in the federal capital of Brasilia, it currently has four regional coordinators responsible for planning and leading operations. These in turn select labour inspectors from offices throughout the country to take part in operations. Operations are of two types. First, there are inspections of particular geographical areas or sectors, based on the previous incidence of forced labour, and foreseen in annual planning. Second, emergency operations are undertaken in response to denunciations. Due to current resource and capacity limitations, priority has been given to the latter.

Box 4.3
Local initiatives to combat forced labour: Targeting charcoal production

In the State of Mato Grosso do Sul, the Permanent Commission of Investigation, Inspection and Control of Working Conditions, established in 1993, has achieved a significant reduction in the incidence of debt bondage in charcoal camps. It is comprised of governmental organizations, trade unions, church groups and NGOs. The approach of the Commission has combined investigation of debt bondage situations, awareness raising and social mobilization, and also judicial follow-up.[49] Combining inspection and law enforcement with coordinated interventions for improving family incomes and children's education has been responsible for its success. Since 1995 the Commission has received support from the ILO's IPEC programme for its work on the eradication of child labour.

monitoring of departure points and vehicles leaving the region was attempted by the Rural Workers' Trade Union in Feira de Santana, State of Bahia; this was prompted after workers from this region had been rescued from forced labour conditions on sugar plantations in the State of Mato Grosso do Sul.

80. At the national level, in the mid-1990s, after the president of the Single Central Organization of Workers (CUT) had raised forced labour concerns in media events, the CUT established a national "slavery hotline" for workers to call to denounce conditions of forced labour. The few denunciations received were passed to the Ministry of Labour and the federal police for investigation. However, in the absence of sustained actions at the local level and capacity to follow up the action taken by the authorities, this "slavery hotline" did not yield the expected results and was eventually suspended. The CUT and its affiliates have nevertheless sustained their actions on forced labour in the States of Mato Grosso and Mato Grosso do Sul. Civil society and religious groups have also launched campaigns against forced labour in Brazil (see box 4.4).

Tougher laws, but enforcement remains elusive

81. The Brazilian Government has recently enacted new legislation to penalize more effectively various aspects of "degrading labour", which includes the concept of forced labour.[50] Yet despite these measures, very few persons exacting forced labour seem to have been penalized. Though over 600 people were freed from conditions of forced labour by the mobile inspection teams in 1999, only two individuals were reportedly arrested for resorting to forced labour. While the Government has mentioned the need for really severe sanctions, evidence of this is slight. The impunity enjoyed by those responsible, the slowness of judicial processes, and the lack of coordination among the governmental bodies end up protecting those responsible for exacting forced labour in **Brazil** as elsewhere. Moreover, in the few cases where persons responsible for exacting forced labour have been convicted,

[49] Between 1997 and 1998 it undertook over 130 inspection visits in charcoal batteries, sugar cane distilleries, and the cotton and grass-seed harvests, and also participated in numerous negotiations and follow-up meetings.

[50] Act No. 9777 of December 1998 amends certain sections of the Brazilian Penal Code, which already provides for sanctions for reducing someone to a "condition analogous to slavery". Penalties of imprisonment are increased for anyone who endangers the life or health of another person as a consequence of transporting workers illegally for the purpose of subjecting them to illegal labour practices. Penalties of imprisonment are imposed on anyone who forces workers to use or consume a certain product, or to oblige them contracting a debt preventing them from leaving their employment when they so wish. There are further penalties for anyone who fraudulently recruits workers from outside the locality in which the work will be performed, or fails to return the worker to his or her place of origin.

Box 4.4
"Keep your eye out for slave labour"

In several northern states of Brazil, the (Catholic) Church Land Commission has distributed a small pocket folder entitled "Keep your eye out for slave labour". It uses cartoons to explain slavery-like situations, and also contains the telephone numbers of the Ministry of Labour, Federal Police, and local rural workers' trade unions. A similar practice has now been adopted by the Special Mobile Inspection Unit, which hands out folders to each worker encountered during its inspection raids.

they appear to have been intermediaries or small owners rather than the owners of large estates or enterprises.

82. The non-enforcement of legislation limiting the percentage of payment that a worker may be paid in kind, or the amount of credit that can be taken out in the employer's on-site store, also sometimes lead to a situation of forced labour. This has occurred with members of the largely illiterate and non-numerate Enxet ethnic group in **Paraguay**, for instance, who have been trapped in situations of debt bondage with ranchers. Beginning in 1991, some have brought legal proceedings against their employers for unpaid and underpaid wages. While the courts may provide some relief, top priority must go to creating economic and social conditions that impede and discourage forced labour from happening in the first place.

5. Domestic workers in forced labour situations

Domestic workers may fall prey to forced labour

83. Working largely in the sphere of private households, domestic workers "experience a degree of vulnerability that is unparalleled to that of other workers".[31] Domestic work per se is of course not forced labour. But it can degenerate into forced labour when debt bondage or trafficking is involved – or when the worker is physically restrained from leaving the employer's home or has his or her identity papers withheld. In a variety of countries, the plight of women domestic workers in forced labour situations has grabbed headlines; this has particularly been the case regarding domestic workers employed in the Middle East.[32] The worst situations involve violence, sometimes extending to rape and/or torture.

84. When the domestic workers are international migrants, the problems are compounded further.[33] Isolated but shameful cases of diplomats and international civil servants engaging in such improper practices have at least served to draw media attention to the plight of domestic servants who have been held in situations akin to slavery. In **France**, for instance, the Comité contre l'Esclavage Moderne (Committee against Modern Slavery), which cooperates with the French Democratic Confederation of Labour (CFDT), has "revealed a situation that was hidden and given it a name".[34] Even under less dramatic circumstances, working in forced labour circumstances can be particularly harmful, as when, primarily in developing countries, most often girls and sometimes boys spend long days toiling in private households instead of attending school. This phenomenon tends to be most common in urban areas, with

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[31] A. Blackett: *Making domestic work visible: The case for specific regulation*, Labour Law and Labour Relations Branch (ILO, Geneva, 1998), p. 5. See also M. L. Vega Ruiz: "Relación laboral al servicio del hogar familiar en América Latina", in *Relasur* (Montevideo) No. 5, 1998, pp. 35-51.

[32] ILO: *Migrant workers*, Report III (Part IB), General Survey on the reports on the Migration for Employment Convention (Revised), (No. 97), and Recommendation (Revised) (No. 86), 1949, and the Migrant Workers (Supplementary Provisions) Convention (No. 143), and Recommendation (No. 151), 1975, International Labour Conference, 87th Session, Geneva, 1999; P. Stalker: *The work of strangers: A survey of international labour migration* (Geneva, ILO, 1994), pp. 109-110.

[33] E. Chaney and M. Garcia Castro: *Muchachas no more* (Philadelphia, Temple, 1989); R. Torrealba: Trabajadoras migrantes en el servicio domestico en Venezuela, World Employment Programme, Geneva, Working Paper MIG WP 718, 1992; ILO: *Filipino migrant women in domestic work in Italy*, World Employment Programme, Geneva, Working Paper MIG WP 54, 1991.

[34] ICFTU: "Slavery in the year 2000", in *Trade Union World* (Brussels) No. 11, Nov. 2000, p. 6.

children having been lured from poor rural areas – as reported in **Benin** (100,000 children), **Côte d'Ivoire** (no figures) and **Haiti** (250,000 children).[35] Even adult domestic workers are subject to the same fraudulent and coercive recruiting practices as those faced by rural workers, and themselves often come from the countryside.

85. Once on the job, domestic workers tend to work in isolation, creating ample opportunity for disregarding labour legislation, if it applies to them in the first place. Indeed, domestic workers suffer prejudice on account of their frequent exclusion from the coverage of labour legislation in developed and developing countries alike, and the obstacles they face in exercising freedom of association.[36] This combination makes it all the more difficult for them to extract themselves from situations involving forced or compulsory labour. Some countries, such as **Switzerland**, have adopted special legislation or administrative measures intended to provide proper contracts of employment for domestic workers as a means of avoiding such a fate.[37]

[35] ILO: *Review of annual reports under the Declaration*, 2001, and Ministry of Humanitarian Action and Human Rights (France) and ILO: *Un d'esclaves* (Geneva, 1994) (videocassette).

[36] The first Global Report under the follow-up to the ILO Declaration – ILO: *Your voice at work*, Report of the Director-General, International Labour Conference, 88th Session, Geneva, 2000 – highlighted this problem.

[37] A. Blackett, op. cit., and "Contrat-type de travail pour les travailleurs de l'économie domestique" in *Recueil systématique de la législation genevoise* (Geneva), JI 50.03, 18 Jan. 2000.

6. Bonded labour and its eradication

Defining bonded labour: Conceptual and policy concerns

86. Another form of forced labour which is still extensive is bonded labour. First of all, who is a bonded labourer? The term refers to a worker who renders service under conditions of bondage arising from economic considerations, notably indebtedness through a loan or advance. Where debt is the root cause of the bondage, the implication is that the worker (or dependants or heirs) is tied to a particular creditor for a specified or unspecified period until the loan is repaid. Thus legal intervention is required to declare such bondage unlawful, and to provide for sanctions against those landowners or other employers who hold their workers in bondage. And supplementary measures are normally required, including economic assistance and rehabilitation, to assist the released workers earn a livelihood and thereby ensure that they do not fall back into a situation of bondage.

87. The identification of bonded labourers has presented certain difficulties throughout the Asian region in particular. The legal definitions of both a *bonded labourer* and a *bonded labour system* may be considered clear enough in such countries as **India** and **Pakistan**, which have adopted specific legislation on the subject, but that first step remains to be taken in other countries where the problem also persists (e.g. **Nepal**).

Struggling for a contemporary understanding

88. There have been lengthy academic debates as to whether certain patterns of rural labour relations should be classified as "free" or "unfree", in the light of the agrarian and social changes that have affected the region over the past few decades. Some analysts associate bonded labour with traditional patterns of land-ownership, including the caste-based or personally bonded labour which is secured by debt, and which can frequently extend across generations. Others argue that bonded labour has also been a feature of recent trends in commercial agriculture, of both large and small scale, involving the debt-based attachment of casual and migrant workers. As now recognized within the framework of the United Nations Commission on Sustainable Development, sustainable agriculture will not be possible without respect for fundamental principles and rights at work. Moreover, much of the recent attention has been on the emergence of

forms of bonded labour *outside* the agricultural sector. Mines, brick kilns, leather, fish processing and carpet factories are among the industries where bonded labour has been detected outside agriculture. At the heart of the issue is whether extra-economic coercion, in the form of physical restrictions and requirements to provide paid or underpaid labour services, is a necessary condition for providing a worker as bonded; or whether factors of economic coercion should also be taken into account.

Sharecropping can display a variety of features

89. Precarious forms of tenure such as sharecropping can also present difficulties. Sharecroppers receive earnings in kind as a proportion of the harvest, which can itself vary considerably. Under more favourable arrangements, they might receive half or more of the harvest without any obligation to provide tools, seeds or other inputs. Under less favourable arrangements, they may have to furnish inputs, receive perhaps less than half of the produce, and also have to provide different kinds of unpaid labour services to landowners in accordance with demand.[58] In this latter sense, sharecropping systems can have much in common with the rural serfdom that has until recently been widespread in the Indian subcontinent and other developing regions, and that is sometimes interpreted as a form of bonded labour.

90. And yet sharecropping, as other forms of share tenancy, may not necessarily be equated with poor working conditions, or any form of economic and extra-economic coercion. In the post-independence land reforms era, the "land for the tiller" programmes of the South Asian region sought tenancy protection and some limitations on private agrarian property through the imposition of ceilings on the size of individual land ownership. As in **India**, the land reforms enacted in different states after the 1950s aimed: first, at abolishing such intermediary tenures as the *zamindari* system; second, at providing security of tenure to tenants; and third, at imposing a ceiling on land-ownership. Direct tenants of the *zamindar* estates became the new owners, though other complex layers of sub-tenancies and sharecropping were not affected by the reforms. However, while there has sometimes been a tendency in policy analysis to equate sharecropping with the perpetuation of "semi-feudal" conditions, these views have been quite widely challenged. As redistributive land reform has dropped off most development agendas, tenancy and sharecropping have been viewed more favourably — as steps on the "agricultural ladder" to full land-ownership.

The legal and institutional framework for eradicating bonded labour

Illustrations from three countries

91. Three of the countries in the region most affected by bonded labour, **India**, **Nepal** and **Pakistan**, have taken a number of important initiatives to tackle the problem: legal measures, attempts to gain an idea of the numbers involved, and assessment of approaches used for release and rehabilitation. In addition, **Bangladesh** has indicated that its anti-poverty initiatives include intentions to strictly enforce legislation penalizing the exaction of forced or compulsory labour, and **Sri Lanka** has announced that it wishes to undertake an assessment of the compatibility of domestic legislation with international standards on forced labour.[59] As illustrations, three of these initiatives are examined more closely.

[58] The International Fund for Agricultural Development (IFAD) has estimated that generally throughout Asia the sharecropper will pay 50 or even 100 per cent of the input cost plus 100 per cent of labour cost (including own labour) and receive between 35 and 50 per cent of the output. See: *The state of world rural poverty* (Rome, IFAD, 1992).

[59] Government report under ILO. *Review of annual reports under the Declaration*, 2001.

India adopted its key Act on bonded labour in 1976

92. In **India**, article 23 of the Constitution prohibits traffic in human beings, *begar*,[60] and other forms of forced labour. Following its adoption, laws were originally enacted at the state level to eradicate bonded labour systems. Subsequently the important federal law, the Bonded Labour System (Abolition) Act, was adopted in February 1976.[61] Responsibility for its implementation lies with the individual states. Vigilance committees set up under the Act at both district and subdivisional levels have played an important role in economic and social rehabilitation, monitoring the number of offences of which cognizance has been taken under the Act, making surveys of the incidence of such offences, and defending any suit against a freed bonded labourer for the recovery of any bonded debt.[62] The vigilance committees have also conducted surveys for identification and enumeration of the bonded labour system.

93. In the early 1980s, several judgements of the Indian Supreme Court further interpreted the concepts of forced labour and bonded labour.[63] Overall, the logic of these rulings appears to be that no person would work for less than the legal minimum wage unless an element of coercion was involved. Yet they prepare the ground for a considerable increase in the persons who might be considered as bonded labourers for the purposes of the Bonded Labour System (Abolition) Act. They may also have inspired other decisions involving forced child labour.

Pakistan adopted its Act on bonded labour in 1992

94. In **Pakistan**, the Constitution similarly prohibits all forms of forced labour and traffic in human beings. Bonded labour was abolished by specific legislation, when the Bonded Labour System (Abolition) Act was adopted by the federal legislative body in 1992, and came into force immediately. The Bonded Labour System (Abolition) Rules were subsequently issued by the federal Government in 1995. The Act contains many provisions similar to the Indian law. It also provides for penalties for the enforcement or exaction of bonded labour under the bonded labour system, for the omission or failure to restore possession of property to the bonded labourer, and for abetting an offence.

95. Vigilance committees set up under the Act at the district level consist of elected representatives of the area, representatives of the district administration, law associations, press, recognized social services and labour departments of the

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[60] The term *begar* has not been defined as such in the Indian Constitution. In a subsequent case the Supreme Court observed that *begar* was a "form of forced labour under which a person is compelled to work without receiving any remuneration".

[61] This defines the *bonded labour system* as the "system of forced, or partly forced, labour under which a debtor enters into, or is presumed to have entered into, an agreement with the creditor" to the effect that the debtor might forfeit certain basic rights.

[62] For a more detailed review of the Act and its implementation procedures, see: L. Mishra: *Burden of bondage* (New Delhi, Manak Publications, 1997); and Y. Reddy: *Bonded labour system in India* (New Delhi, Deep and Deep Publications, 1995).

[63] A 1982 judgement linked the concept of forced labour to the non-payment of the minimum wage. The court gave its opinion that, where a person provided labour or service to another for remuneration less than the minimum wage, the labour or service fell clearly within the scope and ambit of the words *forced labour* under the Constitution. People's Union for Democratic Rights versus Union of India, AIR 1982, S.C. 1473 (known as the *Asiad Workers Case*). In a 1984 judgement, in a response to a petition concerning bonded labour in stone quarries, the court ruled that, "Whenever it is shown that a labourer is made to provide forced labour, the court would raise a presumption that he is required to do so in consideration of an advance or other economic consideration received by him and is therefore a bonded labourer". Such presumption could be rebutted by the employer or state government, but failing the production of satisfactory evidence for such rebuttal the court would proceed on the basis that the labourer was a bonded labourer entitled to the benefit of the provisions of the Act. Bandhua Mukti Morcha versus Union of India, AIR 1984, S.C. 802. And in a further judgement the same year the Supreme Court ruled that whenever a person was forced to provide labour for no remuneration or nominal remuneration, the presumption would be that this was a bonded labourer unless the employer or state government was in a position to prove otherwise. Neeraja Choudary versus State of Madhya Pradesh, AIR 1984, S.C. 1099.

federal and provincial governments. Their functions are to advise the district administration on implementation of the law, help in rehabilitation of freed bonded labourers, keep an eye on the working of the law, and provide bonded labourers with such assistance as may be necessary to achieve the objectives of the law.

In July 2000, Nepal ordered* kamaiya *bondage to be stopped

96. Until recently, there had been no initiative to adopt specific legislation on bonded labour in **Nepal** though the 1990 Constitution prohibits slavery, serfdom and forced labour in any form. Following intensified civil society pressure since the early 1990s, on 17 July 2000 the Government of Nepal by Cabinet Decision declared the *kamaiya* system of bonded labour eradicated, with immediate effect. The *kamaiya* system comprises a long-term rural labour relationship between the farm worker and landowner, and affects only the disadvantaged Tharu ethnic group in several districts of the Terai region of western Nepal. One week later, the Government constituted a central level coordination and monitoring committee under the chairmanship of the Deputy Prime Minister, as well as district level coordination and monitoring committees, to identify and rehabilitate the emancipated *kamaiyas*.[64] The Government is now working on further legislative and other measures.

Estimating the numbers

How wide to cast the net?

97. The first difficulty in determining the population to be measured is related to the fact that land-holding and land-use patterns tend to be common to both bonded and non-bonded labour. A very preliminary study in Pakistan, that examines areas of the province of Sind characterized by sharecropping tenant-farming patterns, brings out some of the problems of identifying and charting bonded labour.[65] For example, a common practice of exchange of services in lieu of pay termed *hegar* is fairly common among sharecropping tenant farmers, as it is in other parts of South Asia — although it is termed differently. This typically implies unpaid work by the tenant farmer for the landowner at peak seasons, linked to particular operations such as harvesting or weeding, which may be agreed upon in advance. Such work, however, in turn involves both those workers that are indebted in a bonded labour sense to the landowner as well as those that are not. The matter is further complicated by the fact that being indebted to a landowner does not automatically imply bondage — neither does recourse to non-institutional debt. Ascertaining the source, purpose and conditions of the debt is of prime importance. Therefore, recourse to seemingly easy short-cuts, such as using debt among tenant farmers as a proxy for bonded labour, would be rife with pitfalls. There seems to be little alternative to surveys with a direct count of bonded labour, with a rigorous methodology that accounts for some of the issues raised here and elsewhere in this report.[66]

Official and unofficial figures

98. In **India** surveys undertaken at either national or state level have produced some official results. A joint survey undertaken by the Gandhi Peace Foundation and the National Labour Institute in 1978-79 estimated a total of 2,617,000 bonded labourers in the ten states surveyed. A more recent report submitted to the Supreme Court in October 1995 by the Commission on Bonded Labour in Tamil Nadu estimated some 1,250,000 bonded labourers in the State of Tamil Nadu alone.

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[64] ILO *Review of annual reports under the Declaration*, 2000, p. 218; see also Governing Body doc. 279/LILS/4, Appendix 2, 279th Session (Geneva, 2000).

[65] A. Ercelawn and M. Nauman, *Bonded labour in Pakistan: An overview* (background paper prepared for the ILO, Aug. 2000).

[66] ibid.

Discrepancies in figures

99. In 1989 the National Commission on Rural Labour commissioned a study group on bonded labour, organized by the National Academy of Administration, to examine various issues related to the bonded labour system, including statistical problems.[67] This group commented on the large discrepancies between the high estimates of the Gandhi Peace Foundation's sample survey, and the far lower estimates in the surveys of state governments.[68] Yet the incidence of bonded labour recorded by state governments more than doubled between 1980 and 1989. States including Gujarat, Haryana and Maharashtra, which had until 1980 denied the existence of bonded labour, subsequently reported its existence. In these three states, bonded labourers were identified mainly through the efforts of NGO activists.

100. The federal Government of **India** has regularly provided statistics of the bonded labourers who have been identified, released and rehabilitated by the individual states. Up to March 1999, 290,340 bonded labourers had been identified by the state governments; of these, 243,375 had been released and rehabilitated, some 20,000 had either died or migrated to other parts, and 17,000 were in the process of being rehabilitated. Action has often been taken under the Bonded Labour System (Abolition) Act, 1976 and Supreme Court directives. Yet the difficulty of collecting reliable statistics on bonded labour has been openly recognized by the Government of India.

The task of identifying bonded labourers in Nepal

101. In **Nepal**, the Government's statistical surveys of bonded labour have focused on the *kamaiya* system of western Nepal. A *kamaiya* agrees to work for a particular landowner on the basis of an oral contract for generally one year. Payment can either be in kind as a fixed volume of grain, supplemented by other foodstuffs including lentils, oilseed and salt; or it can take the form of an output share on sharecropped land — the *kamaiya's* output share typically being one-third of the crop.

102. There can also be interlinked contracts. Under a verbal contract to perform labour, the *kamaiya* is expected to bring other family members to work for the landowner. The second verbal contract is for credit to meet emergencies, food shortages and consumption requirements encountered by the *kamaiya*. The *kamaiya* may be tied to one landowner for years or decades, through an accumulated debt burden. Alternatively, a different landowner may offer to take over the debt in order to secure a *kamaiya's* services. The third type of contract is for land rentals, though by no means have all *kamaiyas* had access to land for their own use.[69]

103. With Nepal's first agricultural reform in the 1960s, a ceiling was fixed on individual landholdings in the major agricultural area where the Tharu live. While the reforms appear to have led to very limited land redistribution (only 1.5 per cent of all agricultural land),[70] it has meant that in general the landholdings that utilize bonded labour are not large. The Tharu ethnic group involved in the *kamaiya* system numbered approximately 1.2 million in the early 1990s. Since not all incur debt, bondage as such is not universal among the *kamaiyas*. A study for the ILO has estimated that some half of all *kamaiyas* are under debt bondage, while almost 10 per cent of them are bonded over generations.[71] Sur-

[67] Study Group on Bonded Labour, conducted by National Academy of Administration, Mussoorie, for the National Commission on Rural Labour, April 1991.

[68] In states including Andhra Pradesh, Bihar, Madhya Pradesh, Orissa, Rajasthan, Tamil Nadu and Uttar Pradesh, the figures provided by the state governments were less than 15 per cent of those in the Gandhi Peace Foundation's survey.

[69] For a more detailed explanation see: S. Sharma et al.: *The kamaiya system in Nepal* (New Delhi, ILO, South Asia Multidisciplinary Advisory Team, 1998).

[70] See: German Technical Cooperation (GTZ), *Land tenure in Nepal: Status and main issues* (1999).

[71] S. Sharma, op. cit.

veys mentioned earlier provide a picture of a largely illiterate, landless people, easily at risk of falling back into debt.

Fresh survey of* kamaiyas *under way

104. In collaboration with the ILO's IPEC programme, the Government undertook a comprehensive survey of the *kamaiya* system and population in 1995, based on door-to-door visits.[72] However, the Government indicated in mid-2000 that the 1995 survey may have underestimated the true number of *kamaiyas*, and a fresh survey and identification of emancipated *kamaiyas* is currently being undertaken[73] to supplement other surveys.[74] A further issue is whether bonded labour is to be found more generally in areas outside western Nepal where the *kamaiya* system has been detected and studied. There is reason to suspect that debt-bondage affects certain castes in many caste-based rural communities.

Eradicating bonded labour: The practical experience

105. The longest experience is clearly to be found in **India**, where a quarter of a century has passed since the first federal law to abolish bonded labour was adopted. **Pakistan** has a decade of experience, and in **Nepal** the initiatives are now seriously under way. Other countries do not seem to have owned up to the fact that they may face a problem. There are lessons to be learned from the experience of each of these three countries that have already taken steps.

Experience in India, 1976-2000

106. The Government of **India** has at length described its extensive efforts to eradicate bonded labour in statements to the International Labour Conference. These have involved: conducting fresh surveys to identify bonded labour; making arrangements after identification — including the issue of release certificates; repatriating in the case of migrant workers; initiating action against those employers responsible under the provisions of the law; and rehabilitating bonded labourers.[75]

Special division set up to pursue an integrated approach

107. As regards rehabilitation, the per capita scale of assistance for rehabilitation of freed bonded labourers has recently been doubled. Resources have been pooled from different programmes (including anti-poverty, rural employment, and rural youth training programmes), to achieve an integrated approach for an effective and permanent rehabilitation. Moreover, the central Government

[72] This identified 15,152 *kamaiya* families, or a total population of 83,375, of whom 62.7 per cent had fallen prey to the debts known locally as *sauki*.

[73] Ministry of Land Reform and Management. *Proposal on immediate action for rescue and rehabilitation of recently emancipated kamaiya labourers of western Nepal* (Kathmandu, Nepal, 2000) (unpublished document).

[74] On the basis of a sample survey of some 3,000 *kamaiyas* from eight districts in mid-1997, the Informal Sector Service Centre (INSEC) reported that there were at the time 26,000 adult males, 1,500 women and 5,000 children working under the *kamaiya* system. S. Sharma and M. Thakurathi. *A revisit to the kamaiya system of Nepal* (Kathmandu, INSEC, 1998). The Department of Land Reform Study in 1995 found that 14.1 per cent of the Tharu population in the five districts covered were *kamaiyas*, 62.7 per cent of the *kamaiyas* had fallen into debt, on average amounting to the equivalent of about US$75. Of the *kamaiyas*, 83.9 per cent were illiterate and 72 per cent had no land for cultivation.

[75] During 1998-99, 5,960 bonded labourers were rehabilitated under a centrally sponsored scheme in the States of Bihar, Orissa, Tamil Nadu and Uttar Pradesh. Senior officials were designated in the course of 1998 and 1999 to visit certain areas, and to review and monitor progress being made by the state governments in the implementation of the Bonded Labour System (Abolition) Act, 1976, and the Bonded Labour Rehabilitation Scheme, 1978.

has initiated a centrally sponsored scheme for assisting bonded labourers, and has established a division within the Ministry of Labour to monitor, coordinate and supervise implementation of the programme. It has also simplified the procedures for approving grants and subsidies, delegating authority to the provincial level.

108. Despite these achievements, the Government of India has recognized the difficulties in tackling the problems of bonded labour, and the need to intensify efforts. The reasons it has cited for this include a lack of sensitivity and will to deal with the problem — particularly at the lower levels of public administration — and a shortage of resources at all levels for the total eradication of bonded labour.

The Indian Supreme Court has played a key role

109. The move to eradicate bonded labour in India appears to have undergone different phases over the past quarter of a century; indeed, it has been higher on economic, political and also legal agendas in some periods than in others. Following the adoption of the 1976 Act, the movement against bonded labour clearly received an impetus from the public interest litigation approach adopted by the Supreme Court in the early 1980s. Its landmark judgements provided new insights into the nature and magnitude of the problem. The subsequent creation of a task force through the National Human Rights Commission furthered the process of identification, release and rehabilitation of bonded labourers. In 1997, the Supreme Court directed the National Human Rights Commission to oversee and supervise the implementation of the 1976 Act, and the progress made by the state governments in this regard.[76]

The Commissioner for Scheduled Castes and Scheduled Tribes has been active in awareness raising

110. An important awareness-building role in the 1980s was also played by the Commissioner for Scheduled Castes and Scheduled Tribes. The reports of the Commissioner have tended to contain a special section on bonded labour, particularly as it affects the situation of scheduled castes and tribes, and to formulate recommendations both to the Government and society at large.[77] Between 1987 and 1991, the National Commission on Rural Labour also constituted study groups on bonded labour and rural labour indebtedness. These studies did much to establish the extent and nature of rural debt, its purpose and sources, as well as its particular incidence among scheduled castes and scheduled tribes.[78] The elimination of bonded labour has very much been seen as an issue for development.

Findings of the National Commission on Rural Labour

111. The Study Group on Bonded Labour of the National Commission on Rural Labour pointed to certain deficiencies in the rehabilitation schemes that had previously been implemented. There had been wrongful identification of bonded labourers in order to gain access to rehabilitation funds. Furthermore, rehabilitation schemes had not improved the conditions of bonded labourers, in that many former bonded labourers were still paying their former masters the remaining amount of borrowed money which according to law stood extinguished.

112. The vigilance committees, though a potent mechanism for eradicating bonded labour, had not — according to the study group's findings — been able to function effectively. They generally lapsed after a couple of years, and were not reconstituted for a long time. The states with a high incidence of bonded

[76] Order given on 11 November 1997 in Writ of Petition No. 3922/85.

[77] See for example: Report of the Commissioner for Scheduled Castes and Scheduled Tribes, 29th Report, 1987-89. This report addressed issues including the partial implementation of the law, land rights and bonded labour, bonded labour on plantations, and bonded labour in mines. The reports appear not to have been produced on a regular basis over the past decade.

[78] Study Group on Rural Labour Indebtedness, Centre for Studies in Social Sciences, Calcutta, November 1990.

Box 6.1
Recommendations of the Study Group on Bonded Labour

In its 1990 report, the Study Group on Bonded Labour made a series of recommendations to the National Commission on Rural Labour in India. These are summarized here:

(1) conduct a countrywide survey, utilizing the central and state official machineries, NGOs, activists and research institutions, to arrive at a precise picture on the nature, prevalence and spread of bonded labour in India, with special attention to migrant labourers, and workers in non-agricultural occupations;

(2) generate awareness and pressure, through a nationwide programme for the education, mobilization and organization of bonded labourers;

(3) move identified bonded labourers to protected camps soon after their release, and keep them there at government expense pending development of concrete rehabilitation packages. Release proceedings should be conducted in open court in the village where the bonded labourer has been identified;

(4) increase the amount of compensation provided by law. The state government should pay any wage arrears to the bonded labourer, later recovering this amount from the ex-master;

(5) involve expanded and strengthened vigilance committees at various stages of the process;

(6) make efforts to organize bonded labourers at various levels, and set up training programmes;

(7) as part of rehabilitation, increase the protection over land and other assets to which the bonded labourers have had access. Extend the prohibition on eviction to any land under cultivation by the bonded labourer and other assets such as brick kilns, and prevent transfer of the bonded labourer's property to a third person;

(8) since the predominant cause for lapsing into bondage for the rural poor is incurring debts largely for consumption needs, direct the jurisdictional banks to provide consumption loans to the released and existing bonded labourers;

(9) provide employment guarantees for released bonded labourers; and

(10) improve both land-based and non-land-based rehabilitation schemes. For bonded labour in agriculture, the ultimate solution is to secure rehabilitation on land.

labour were yet to activate the vigilance committees. Fresh identification of bonded labourers had, moreover, almost stopped in recent years.

113. The study group also found that, although over 240,000 bonded labourers had been officially identified in the country, only a very modest number of 773 keepers of bonded labour had been arrested. Punishments were handed out to a still smaller group after conviction. The Study Group on Bonded Labour made a significant number of recommendations that remain highly relevant (see box 6.1).

Only employment yields lasting freedom

114. The study group pointed out that rehabilitation schemes that did not go beyond temporary relief, provided as cash or at best as temporary assets, merely attracted undesirable elements who skimmed off the benefits. Only employment guarantees and land for peasants could provide lasting protections for released bonded labourers. The state Government of Andhra Pradesh had started a novel scheme of purchasing cultivable land, developing it with irrigation facilities, and granting it to the released bonded labourers. Benefits under other anti-poverty programmes supplemented these measures.[79]

115. Concerning the more recent trends in bonded labour, there are suggestions that the incidence of new bonded labour may be particularly serious in the small and informal industrial sector, as in the brick kilns.[80]

[79] Study Group on Bonded Labour, conducted by Lal Bahadur Shastri National Academy of Administration, Mussoorie, for the National Commission on Rural Labour, April 1991.

[80] United Nations: *Contemporary forms of slavery*, report of the Working Group on Contemporary Forms of Slavery, 25th session, New York, June 2000.

Becoming alert to the gender dimension of bonded labour

116. There are also some indications that women may be increasingly affected by bonded labour in agriculture. A recent study in Andhra Pradesh argued that male agricultural labourers were the main beneficiaries of policies encouraging the encroachment of government wasteland, subsidies on credit, productive assets and food, as well as non-agricultural employment generation. Employers thus had less control over the consumption and residence of male workers, enabling men to escape from traditional bonded labour relations. Men had also delegated debt repayment to women both directly — and also indirectly — by shifting more of the responsibility for family provisioning onto women. As a consequence women had felt compelled to take up agricultural work, at whatever wages and conditions were offered. Women had also been forced to take out tied loans to pay men's debts when the men absconded, and to satisfy employers' expectations of loyalty in order to have access to consumption credit in the future. It was argued furthermore that this had involved their working on employers' or creditors' farms at significantly lower tied wages, as well as performing unpaid tasks throughout the season.[81] Though these are the findings of just one recent study in a single Indian state, the thesis is of sufficient importance to merit more analysis.

Experience in Pakistan, 1992-2000

A focus on children

117. Official information on efforts to eradicate bonded labour over the past decade in **Pakistan** has emphasized the serious problems of child bonded labour in that country, where some major research and action programmes have been undertaken with the assistance of the ILO. An example is the agreement between the European Union and the ILO signed in May 1997 to fund technical cooperation projects aimed at: raising awareness on exploitative and hazardous child bonded labour practices; increasing the capacity to withdraw children from bondage and prevent them from entering bondage; and targeting child-bonded labourers and their families in the context of overall rehabilitation programmes. Legal texts on child and bonded labour have also been translated into the Urdu and Sindhi languages.

The role of vigilance committees

118. As regards the practical implementation of the Bonded Labour System (Abolition) Act, 1992, and the 1995 Rules on the subject, the Government has reported that the vigilance committees have been enlarged and strengthened. As observed at the 82nd Session of the International Labour Conference (1995), however, some of these committees might need to be further reinforced. The All-Pakistan Federation of United Trade Unions (APFUTU) has requested that trade unions be involved directly in the vigilance committees, which are supervised by the home departments of the provinces.

New sectors: An area for concern

119. In the absence of systematic surveys by either the federal or provincial governments to establish the magnitude and intensity of bonded labour, most of the information available comes from academic research institutes, which in turn often consult NGOs. There is general agreement that the most serious problems of bonded labour are detected among sharecroppers in the province of Sind, and among brickmakers in Punjab.[82] Analysts are also concerned that bonded labour is gaining importance in other sectors such as fisheries and carpet making. Fears are expressed that the rapid growth of the informal manufac-

[81] L. da Corta and D. Venkateshwarlu, "Unfree relations and the feminization of agricultural labour in Andhra Pradesh, 1970-95" in: *Journal of Peasant Studies* (Ilford, Essex, United Kingdom) Vol. 26, Nos. 2/3, January/April 1999.

[82] For example, the Bonded Labour Liberation Front (BLLF) estimates that approximately 2,000 bonded labourers and their families were freed with its assistance from forced labour in brick kilns between January 1999 and May 2000.

Box 6.2
Abusive treatment of *hari* sharecroppers

The plight of the *hari* sharecroppers is grim. Under the survey conducted in mid-2000 virtually all of the approximately 1,000 respondents, stated that adult men and women had been compelled to carry out forced labour *(begar)*. For young children of either sex, almost 90 per cent reported *begar*. Over three-quarters of respondents stated that they had been subject to physical restraint, such as being locked up at night or kept under guard. And almost all the *haris* in the camps stated that the men had been separated from other family members at night. There was also widespread reference to practices of detaining *haris* in private jails for periods as long as six or 12 months or more, of shackling them with chains or tying them up with ropes, and of sexual abuse of women.

turing sector, particularly in rural areas, may, while reducing the number of the unemployed, lead to the creation of more bonded labour.

The* haris *face a sorrowful plight

120. The most severe conditions of bondage have been detected among landless tenants (known as *haris*) in lower Sind. A survey of seven *hari* camps in Sind, conducted in mid-2000, has tended to confirm the severity of conditions encountered by bonded agricultural workers in this region. Shocking practices have been documented by the Human Rights Commission of Pakistan (HRCP), which reported in 1999 that 2,300 persons had been released from private jails during that year alone (see box 6.2).

The persistence of feudal practices

121. Rural Sind would therefore appear to be a classic example of a feudal system, where landowners have even gone on the offensive to defend the bonded labour system as integral to the culture of Sind as an agrarian society. They have reportedly disagreed that relations with their tenants are covered by the bonded labour legislation, insisting that disputes over debt should be handled through the tenancy tribunals under the Tenancy Act. A factor contributing to this stance may have been the adverse economic pressures recently faced by landowners, including rising input prices as subsidies have been reduced.

122. Government initiatives have permitted released *haris* to set up shelters on state land. Such camps have a temporary status, dependent for their security on the goodwill of the local administration and neighbouring inhabitants. Development planning efforts like the country poverty strategy have not so far targeted bonded labour as a special category. While vigilance committees have been established (though in some cases for the first time in 1999, and only in a few districts), they have tended to act only after receiving complaints. The Government has publicly announced its intention to finance specific programmes addressing bonded and child labour.

123. In the meantime, human rights organizations, trade unions and other activist groups have expressed concern or taken initiatives by providing legal assistance for the release of bonded labourers; but the absence of collective bargaining for workers in the rural sector is an obstacle to trade union action.

Creating a physical refuge

124. To provide a safe haven for *haris* fleeing bondage, the Human Rights Commission of Pakistan (HRCP) has purchased a small piece of land in Sind province. Nearly 200 families — consisting of over 1,000 persons — had taken refuge at the camp by mid-2000. While the *haris* have put up their own traditional shelters, HRCP has contributed by installing hand pumps for drinking water. Religious groups in Sind have also helped provide land for a *hari* camp, together with financial assistance for immediate relief.

125. Such measures may only be the beginning, however. An ILO study concluded recently that rapid economic growth, which includes jobs and higher wages along with urbanization, will need to accompany the elimination of bonded labour in its entirety in Pakistan.[83] In the meantime, enhanced governmental initiatives directed specifically to bonded labour could produce significant improvements.

Experience in Nepal, 1995-2000

Following up on the prohibition of the* kamaiya *system

126. In relation to efforts to eradicate bonded labour, the recent experience in **Nepal** is unique. Following a campaign in the early 1990s by NGOs, which brought national attention to the *kamaiya* system in western Nepal, the Government has demonstrated a strong commitment to abolish this system and to release and rehabilitate all those affected. Following the Cabinet decision to ban the *kamaiya* system, in July 2000, the Government drew up detailed plans for an emergency rescue and rehabilitation programme for the families involved; this is to be implemented first in a short-term emergency phase and subsequently over a three-year period.

Government has opted for a revolutionary approach

127. The Government has stated that its policies towards *kamaiya* emancipation have moved from an "evolutionary" to a "revolutionary" approach. Initially, it provided various kinds of support to *kamaiyas*, enabling them to pay off their debts, rather than abolishing the debts by law. From 1995 onwards it allocated the equivalent of around US$900,000 to a number of programmes to abolish the *kamaiya* system which focused on: the development of a revolving fund for low-interest financing of income-generation activities; generation of a fund for financing the settlement of homeless *kamaiyas*; training in diverse skills, including carpentry, masonry, electricity, animal husbandry and horticulture; and land distribution. In addition, a *kamaiya* Livelihood Programme, carried out by the Department of Land Reform, gave emphasis to social mobilization, skills development, credit and training programmes. The Ministry of Labour also commenced a programme of skills development for *kamaiya* households, but the limited results[84] led the Government to judge this approach to be inadequate for achieving full emancipation.

Ambitious short-term objectives

128. The Government's Cabinet Decision to ban the *kamaiya* system reflects a more radical approach. It has also adopted plans for an emergency rescue and rehabilitation programme for the *kamaiya* — to be implemented over a three-year period and administered by a Central Level Coordination and Monitoring Committee. Local responsibility for its implementation will lie with district level coordination and monitoring committees. Ambitious short-term objectives have been set by the Government:

- enactment of the Bonded Labour Prohibition Bill, prepared with ILO assistance;[85]
- rapid updating of the 1995 *kamaiya* survey record;
- distribution of identity cards to all emancipated *kamaiyas*;
- identification of government or public land suitable for distribution to the landless *kamaiyas*;

[83] A. Ercelawn and M. Nauman, op. cit.

[84] Only 5,750 *kamaiyas* received skills training, and only 1,050 secured their freedom.

[85] The Bill's substantive provisions are largely similar to those found in the earlier legislation of India and Pakistan. They provide for automatic redemption from bondage, invalidation of loan or deed agreements, and return of property taken by the creditor to secure the debt. The institutional arrangements foresee district welfare committees, which are to comprise central and local government officials, a representative from local banks, and persons appointed by the Government from NGOs and trade unions. The Bill also provides for a welfare fund, a complaints and investigation mechanism through the welfare officer, as well as punishment and compensation.

Box 6.3
ILO project on the sustainable elimination of bonded labour in Nepal

The InFocus Programme on Promoting the Declaration and the International Programme on the Elimination of Child Labour (IPEC) have joined forces to design a project that adopts an integrated approach to tackling problems faced by the extremely poor in western Nepal — an area where bonded labour has existed. The project, to be executed by the Government, employers' and workers' organizations as well as NGOs, stresses capacity building; support for effective enforcement of minimum agricultural wages; awareness about rights; assistance to reintegrate *kamaiya* families into their communities; and education and training, both formal and informal. The project, one of a score being funded by the United States, will work closely with the ILO Social Finance Unit's subregional project on combating debt bondage through microfinance schemes.

- proposals for possible rescue and rehabilitation action once the emancipated *kamaiya* have been identified; and
- implementation of both governmental and non-governmental social and development programmes in an integrated and coordinated manner.

Targeting the homeless and the landless first

129. In its immediate rescue and rehabilitation programme, the Government has targeted first the homeless and the landless. The Government has called for international assistance — and the ILO has taken the lead locally to bring various international organizations and the donor community together so that they might cooperate in support of the Government's initiatives. In its early stages, the initial phases of the programme resemble a response to a natural disaster or emergency and concentrate on the need for basic items such as: food support; tents and temporary roofing materials; minimum cooking utensils; ground sheets and blankets; medicines and minimum health care. Medium-term rehabilitation programmes have been envisaged to provide support for low-cost housing, education and health care, installation of drinking water, employment-generation schemes and skills development, as well as microcredit programmes.

ILO project supports government efforts

130. Responding to **Nepal's** show of political will to stamp out bonded labour, the ILO was to launch a major project in late 2000 with financial support from the **United States**. This project will support labour-related measures, including training to rehabilitate an estimated 75,000 formerly bonded labourers to prevent them from sliding into other forms of exploitation (see box 6.3). An ILO role is also foreseen in building up organizational and bargaining skills as both the workers and landowners adjust to the condition of free labour. Furthermore, these efforts should be seen together with broader measures intended to improve workers' living conditions in rural areas, to help avoid a resurgence of debt bondage in this part of the world.

7. An extreme case: Forced labour exacted by the military

Strong measures for an extreme case

131. In contrast to situations in which governments are acknowledging the existence of various forms of forced labour and making attempts to address them, a few countries basically reject the idea that there is such a problem. This perception has often coincided with the exaction of forced labour by the military and related authorities, as seen in **Guatemala** in the 1980s, for example, and under colonial regimes in the more distant past. Today the prime instance of an extreme case of forced labour involves **Myanmar**, where the serious and widespread incidence of forced labour has led the ILO to take unprecedented action under article 33 of its Constitution.

International Labour Conference and Governing Body to keep the matter under review

132. Decisions of the International Labour Conference and the ILO Governing Body have instructed the ILO to:

- keep the matter under review until **Myanmar** has fulfilled its obligations under Convention No. 29, which it has ratified;
- recommend to governments and organizations of employers and workers that they review their relations with Myanmar and take appropriate measures so that such relations do not perpetuate or extend the country's system of forced or compulsory labour;
- contact international organizations to reconsider any cooperation they may be engaged in with this country and if appropriate cease any activity that could directly or indirectly abet forced labour practices;
- request the United Nations Economic and Social Council (ECOSOC) to place on the agenda of its July 2001 session an item concerning Myanmar's failure to implement earlier decisions;
- prepare a periodic report on the outcome of such measures and keep other international organizations informed.[35]

133. The situation in Myanmar has been extensively examined by the regular ILO supervisory bodies, a Commission of Inquiry, the International

[35] Governing Body docs. GB.279/6/1, GB.279/6/1/Rev.1; GB.279/6/1/Add.2; GB.279/6/1/Add.3; GB.279/6/2, 279th Session (2000).

Labour Conference and the ILO Governing Body;[87] it will not therefore be reviewed here. However, certain aspects of these forced labour practices — in so far as they contribute to the "global picture" — deserve to be highlighted. They offer some lessons in relation to the provision of assistance for the eradication of all forms of forced and compulsory labour.

Forced labour burdens the population

134. The ILO Commission of Inquiry found abundant evidence of pervasive use of forced labour imposed on the civilian population by the authorities and the military in Myanmar. Forced labour had been exacted for: portering; the construction and maintenance of military camps; other work in support of the military; work on agriculture and logging and other production projects undertaken by the authorities or the military; the construction and maintenance of roads and railways; other infrastructure work and a range of other tasks.[88] Sometimes, this forced labour had been imposed for the profit of private individuals.

135. Forced labour in Myanmar prevents farmers from tending to the needs of their holdings, and children from attending school. It falls most heavily on landless labourers and the poorer sections of the population. Forced labour is widely performed by women, children and elderly persons, as well as persons unfit for work. The burden of forced labour also appears to be particularly great for non-Burmese ethnic groups, especially in areas where there is a strong military presence, and for the Muslim minority.[89]

What the Commission of Inquiry recommended

136. The main recommendations of the ILO Commission of Inquiry were that: a) the relevant legislative texts be brought into line with the Forced Labour Convention, 1930 (No. 29), without further delay; b) that in actual practice no more forced or compulsory labour be imposed by the authorities, in particular the military; and c) that the penalties under the Penal Code for the exaction of forced or compulsory labour be strictly enforced.[90]

Human rights violations

137. In addition to the ILO, the United Nations has placed forced labour in Myanmar in the context of gross violations of internationally recognized human rights. Numerous Special Rapporteurs appointed by the United Nations Commission of Human Rights since 1992 have also documented cases of severe human rights violations alleged to have been committed by the Myanmar armed forces — in the context primarily of forced recruitment and forced labour. In 2000, the United Nations Commission on Human Rights deplored the continued widespread use of forced labour for work in infrastructure projects, the production of food for the military and portering

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[87] Following a complaint submitted by Workers' delegates to the 85th Session of the International Labour Conference in June 1998, a Commission of Inquiry was set up by the Governing Body in March 1997 in accordance with article 26 of the Constitution. The report of this Commission provides very extensive documentation of cases of forced labour, and also the context in which they occurred. Subsequent reports of the Director-General on measures since taken by the Government of Myanmar, following the recommendations of the Commission of Inquiry, indicated that the problems of forced labour remained extremely serious in 2000.

[88] ILO: "Measures recommended by the Governing Body under article 33 of the Constitution — Implementation of recommendations contained in the report of the Commission of Inquiry entitled *Forced labour in Myanmar (Burma)*", in: International Labour Conference, 88th Session Geneva, 2000, *Provisional Record* No. 4, p. 4/2.

[89] In May 1999 the World Confederation of Labour transmitted a note from a non-governmental organization observing that, although forced labour had decreased in central Myanmar, it was still being reported on a large scale in the seven ethnic minority states which surrounded the central Burma plain. Troops seeking labourers usually contacted the village headman, who then organized a rotation system whereby each family had to provide one person for a project.

[90] ILO: *Forced labour in Myanmar (Burma)*: Report of the Commission of Inquiry appointed under article 26 of the ILO Constitution to examine the observance by Myanmar of the Forced Labour Convention, 1930 (No. 29), *Official Bulletin*, Vol. LXXXI (Geneva, 1998), Series B, also available at http://www.ilo.public.english/standards/relm/gb/docs/gb274/Myanmar.html

for the army, as well as forced labour in relation to trafficking and the conscription of children into forced labour programmes.[91] In 1999, concern over the matter within the ILO prompted other organizations, including the World Bank and the Office of the United Nations High Commissioner for Refugees (UNHCR), to provide information relating to the continued exaction of forced labour in Myanmar.

The need to repeal old laws

138. The concerns relating to forced labour in **Myanmar** can usefully be divided into two categories: those of law and those of continuing practice. An outstanding problem of law has been the non-repeal of the Village Act (1907) and the Towns Act (1907), both colonial laws which provided for the call-up of labour in broad terms. Despite the fact that antiquated laws were considered at one stage to have fallen into abeyance,[92] the recent experience in Myanmar illustrates the importance of repealing them.

Thorny problems continue in practice

139. The problems in practice may be more difficult to resolve. The situation in Myanmar may involve examining some structural factors favouring the existence of forced labour, including long-standing patterns of ethnic marginalization, and addressing the issue of cultural acceptance of the provision of unpaid labour by traditional communities. Tailoring a solution would need to take these factors into account. But there can be no real possibility of tackling the problems of forced labour through specific and targeted programmes of technical assistance until a government has demonstrated the firm political will to eradicate a generalized practice, and to investigate and sanction severely the exaction of forced labour by its own officials.

The Government's view and recent action

140. With the practices having been used over a lengthy period in Myanmar, the Government of Myanmar has long rejected the characterization of these activities as forced labour, emphasizing instead its programmes for infrastructure and socio-economic development in various parts of the country.[93] However, in October 2000, it received a technical cooperation mission and it has subsequently adopted new legislative orders and directives and outlined other administrative measures against forced labour.[94] The question which is now outstanding is whether, despite its stated position of non-cooperation[95] with the ILO following the entry into force of the measures under article 33, it will accept to have an objective assessment of the practical implementation and actual impact of these measures which the ILO alone is in a position to make.

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[91] United Nations: *United Nations Commission on Human Rights, resolution 2000/23: Situation of human rights in Myanmar*, 56th session, New York, 2000.

[92] Successive governments stated that, although the provisions established during the old colonial rules were still in force, the authorities concerned no longer exercised the power vested in them. As long ago as the late 1970s, a new law to replace this forced labour legislation was reportedly being drafted by the authorities concerned.

[93] For example, in correspondence reproduced in ILO: *Provisional Record* No. 4, 88th Session, op. cit.

[94] Position paper of the delegation of Myanmar, reproduced in Governing Body doc. GB.279/6/1(Add.5).

[95] While Myanmar has ratified Convention No. 29, it has not ratified Convention No. 105 and thus was to report on efforts it was making under the follow-up to the Declaration. No report had been received by 1 January 2001 for the first or the second reporting period under the Declaration follow-up.

8. Forced labour related to trafficking in persons: The underside of globalization

Trafficking: A global problem

141. The broader phenomenon of trafficking in persons, an issue of growing alarm, often has forced labour aspects. It involves men and boys, but above all women and girls. Affecting richer and poorer countries alike, it is a truly global phenomenon. The points of origin may be the poorer countries, and often the most deprived rural areas within these countries. The main destinations may be the urban centres of the richer countries — Amsterdam, Brussels, London, New York, Rome, Sydney, Tokyo — and the capitals of developing and transition countries. But the movement of trafficked persons is highly complex and varied. Countries as diverse as **Albania**, **Hungary**, **Nigeria** and **Thailand** can act as points of origin, destination and transit at the same time.

142. While the media focuses on trafficking for the sex sector, persons are often trafficked for other purposes that may involve forced labour. The past movement of Haitian agricultural workers into the **Dominican Republic** was a typical example of international labour trafficking. Similar coercion involving agricultural migrant workers has been detected on many continents. Domestic workers, factory workers and particularly those in the informal sector can all become the victims of this phenomenon. While economic forces drive it, it will take a range of tools to combat it. Trafficking in human beings is a moral outrage, yet criminal penalties for engaging it are often less stringent than trafficking in drugs.[96]

United Nations arrives at international definition in November 2000

143. However, an agreed definition of trafficking in persons — helpful for more effective international action — proved elusive until quite recently. Under the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime[97] that was opened for

[96] Interpol, Second International Conference on Trafficking in Women and Illegal Immigration, Lyon, 28-30 November 2000.

[97] Neither of these instruments is yet in force. Prior to this, the main international treaty was the United Nations Convention on the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, adopted by the United Nations General Assembly in 1949 — an instrument of much more limited scope.

signature in December 2000, article 3(a) defines "trafficking in persons" to mean:

> ... the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

Exploitation includes forced labour

144. The Protocol further specifies that "exploitation" includes, among other things: "forced labour or services, slavery or practices similar to slavery [or] servitude" (article 3(a)). It adds that consent by an adult victim of trafficking shall be irrelevant when any of the means included in the definition have been used. For persons under 18 years of age, the very recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation constitutes "trafficking in persons". Throughout the preparatory sessions, it was the concern of the United Nations, the ILO and other international organizations that the very definition of *trafficking* should include a reference to its coercive elements, including forced labour, debt bondage and slavery-like practices.

145. Trafficking in persons is sometimes complicated, requiring examination "not only of the manner in which a migrant entered the country but also of their working conditions, and whether the migrant consented to the irregular entry and/or these working conditions. Trafficking and more voluntary forms of undocumented migration are best thought of as a continuum, with room for considerable variation between the extremes".[38] Part of the problem is whether trafficking in persons should be considered a form of illegal migration, since this has implications for counter-trafficking measures. In practical terms traffickers end up using people to generate income from forced labour exacted from them.

The mechanics of trafficking

146. How does trafficking in persons operate? At its simplest it involves movement of persons for the purpose of performing labour, most probably to engage in illicit activities or employment to be carried out under working conditions that are below the statutory standards. It involves an agent, recruiter or transporter who will most likely derive profit from this intervention.

147. Coercion may not be evident at the beginning of the trafficking process or cycle. The person may enter into an agreement with the recruiting agent on an apparently voluntary basis, albeit often without having been given full information. But conditions at the destination point are likely to involve coercion, including physical restrictions on freedom of movement; abuse or violence; and fraud, often in the form of non-payment of promised wages. Victims frequently find themselves trapped in debt bondage and other slavery-like conditions.

148. Indeed, much labour trafficking may be seen as a contemporary form of debt bondage. This is not the "bonded labour" referred to earlier in the text, which derives from traditional serfdom in agriculture and is handed down over generations. Debt bondage can be of far shorter duration. Its main motive is to extract profit by diverse methods, that range from the provision of illicit services — such as falsification of documents — to the criminal use of outright force.

[38] J. Salt and J. Hogarth: *Migrant trafficking and human smuggling in Europe: A review of the evidence* (Geneva, IOM, 2000).

Steps to take

149. Combating the forced labour aspects of trafficking in persons more effectively calls for:

- First, greater understanding of how to recognize the phenomenon, to pave the way for more effective policies, laws and programmes of action around the world.
- Second, comprehension of the nature and dimensions of the problems. What are the main trafficking routes both within and across borders? When they change (as they rapidly do), which institutions do they deal with? What tends to be the profile of trafficked persons, disaggregated by sex, age, social origin, racial and ethnic group?
- Third, examination of the causes and the effects. What research has been done on the social and economic factors behind the growth of trafficking?
- Fourth, publicity about the measures being taken, by governments, social partners, international organizations, religious groups and others to deal with forced labour aspects of trafficking.

Trafficking and forced labour: Demographic and gender aspects

150. It is important to know which population groups are most affected by trafficking for forced labour, and how. What is the experience of men? Women? Boys? Girls? Are poorest sectors of society always the most affected? Are the problems particularly concentrated in specific areas or among certain ethnic or racial groups?

151. From anecdotal information, random case studies and media accounts, the indications are that women and children are the groups most affected, and that Asia and Central and Eastern Europe are the geographical areas where the forced labour dimensions of trafficking are most evident. But it is a growing problem in Africa and the Americas as well.

152. Accepted wisdom holds that the "feminization of forced labour and trafficking" goes together with the "feminization of migration". And yet there have actually been very few case studies of any type of trafficking, and they tend to be very small-scale surveys without a uniform methodology. The more recent of these small-scale surveys in Asia have often emphasized the "voluntary" nature of trafficking in its initial stages, in that young persons may actively seek out the services of a "trafficker".[99] Other examinations of trafficking have lamented the lack of attention to the phenomenon in sectors including domestic work, unregulated industrial work, agriculture and the informal economy. In Asia the studies have focused very deliberately on the sex-trade sector.

Alarming patterns of recruitment in Asia

153. In a small-scale survey of different research sites along the borders of **Thailand** with **Lao People's Democratic Republic** and **Myanmar**,[100] coercion, deception and the selling of minors were seen to have occurred most commonly in cases of direct recruitment from the village. The interviews revealed a number of cases of slavery-like conditions, including

[99] It has been observed, for example, in South-East Asia that the percentage of girls trafficked for prostitution by force is decreasing, while the number persuaded to enter prostitution voluntarily is increasing, in part because of their ignorance of the precise nature, dangers and stigma attached to this activity. K. Archavanatikul: *Trafficking in children for labour exploitation including child prostitution in the Mekong sub-region* (Bangkok, July 1998).

[100] C. Wille: *Trafficking in children into the worst forms of child labour in Thailand*, Asian Research Centre for Migration and Institute of Asian Studies, Chulalongkorn University (preliminary draft, 2000).

some (but not all) establishments in the sex industry where girls were held in debt bondage until a certain amount of money had been paid. The study also revealed domestic work situations in which minors were never paid and were prevented from leaving. It concluded that the trafficking process itself was not usually exploitative, and that an apparently voluntary process of labour migration organized by families, trusted friends or the children themselves appeared to be much more common. Other studies have however emphasized the coercive elements of trafficking, with a strong element of debt bondage to repay the cost of travel, and all repayment calculations at the employer's discretion.

154. Research in poor villages in **Nepal** has found that fathers and other relatives may even be so desperate as to sell children to intermediaries. Traffickers can have links with go-betweens in the cities of destination through brokers, and their accomplices may include relatives and friends as well as political leaders.[101] Concerned at the increase in trafficking, the police in Nepal are cooperating in a number of awareness-raising programmes together with the ILO, UNICEF, UNIFEM and others.

155. In Africa, there is limited documentation on labour trafficking within the region. It is recognized that young African women have been quite widely trafficked to the European sex trade. In the mid-1990s there was a wave of reported trafficking from West Africa, in particular **Ghana** and **Nigeria**, to **Italy**, the **Netherlands** and other European countries. Trafficking of women from the Mahgreb and sub-Saharan African countries has also been reported in **France**.[102]

The different dimensions of trafficking in Africa

156. The nature and composition of trafficking *within* the African region would appear however to be different. The ILO's own research, conducted under IPEC auspices, inevitably focuses on children. But its recent findings from the West African region can shed some light on the broader dimensions of trafficking within Africa.[103] The types of trafficking identified in West Africa have included abduction, placement for sale, bonded placement, placement for a token sum, placement as a service, and placement as a form of embezzlement. There are also instances of trafficking of children linked to armed conflict.

157. In general, boys have mainly been trafficked for work in agricultural plantations, and girls as domestic servants in Africa. However, both sexes have been found in other activities including street trade, catering and prostitution. **Côte d'Ivoire** has identified urban child labour as being linked to trans-border trafficking.[104]

158. When researching forced labour in relation to the trafficking of children, it has been difficult to draw a clear distinction between "cultural placement" and placement for labour exploitation. As a long-standing African cultural tradition, children have often been placed with family members living in better economic conditions. However, while this also continues in the traditional sense, a greater number of children are now being exploited for economic reasons.

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[101] See: *National plan of action against trafficking in children and their commercial sexual exploitation*, Ministry of Women and Social Welfare and ILO-IPEC (Kathmandu, 1998).

[102] Salt and Hogarth, op. cit.

[103] D. Verbeet: *Combating the trafficking in children for labour exploitation in West and Central Africa*, Synthesis report, ILO-IPEC, Abidjan, July 2000 (unpublished).

[104] ibid., information from the Government of Côte d'Ivoire.

The sex trade dominates trafficking in Europe

159. In Europe, though much of the recent media attention has been on forced female prostitution, a recent study argues that the largest number of victims are male.[105] Over 80 per cent of the migrants trafficked into **Ukraine** were found to be male — most of them in the 20-40 year age group. In **Poland** the proportion of males was even higher at 91 per cent, with 62 per cent in their twenties. Those from **Belarus**, the **Russian Federation** and **Ukraine** were older and those from the Arab States younger. One study found that more female than male migrants were trafficked into **Poland** from the CIS countries and other parts of Europe, whereas the opposite was true of migrants from the Middle and Far East and Africa.[106] And yet the problems with data of this kind are easily apparent. The authors admit that the data are not exactly comparable, since for some countries they may relate to illegal border crossings rather than specifically to trafficked migrants. Statistics in **Belgium** and **Germany**, for example, tend to be for illegal immigrants generally, without any indication of the involvement of traffickers.

160. As in Asia, a great deal of evidence for coercive trafficking in Europe relates to women in the sex sector — arguably reflecting that research has tended to concentrate on this area. A recent report on trafficking in **Bosnia and Herzegovina**[107] found that this country had emerged as a significant destination point for women trafficked from East European countries (especially the **Republic of Moldova, Romania** and **Ukraine**). Though some participation in the sex trade by adults appeared to be voluntary, the investigation documented cases where women had passports removed and received no payment for their services. According to the IOM, many of the women were "sold and bought" several times, at prices ranging from 500 to 1,500 euros. Moreover, while all reported cases related to forced prostitution, it was observed generally that the "full extent of the problem has still to be identified" and that "other types of forced labour or debt bondage remain hidden in the grey areas" of the economy.[108] In the Kosovo area of the **Federal Republic of Yugoslavia**, concerns have emerged over trafficking for sexual purposes in the wake of armed conflict and the concentration of troops and economic dislocation that such conflicts entail. The IOM has sounded the alarm about trafficking for the purposes of sexual exploitation throughout the Balkan region. There, as elsewhere, the profitable nature of the activity is increasingly attractive to organized criminal networks.

Movement is East-East and East-West

161. Trafficking in Europe involves "East to East" movements as well as "East to West", with countries having stronger economies (mainly **Hungary**, the **Czech Republic** and **Poland**) becoming countries of destination for others less well off in the region. Countries such as these may act as transit points for Western Europe or North America. Concern over the problem has prompted Hungary to take the important step of penalizing trafficking in persons as a crime in its own right and a violation of personal freedom and dignity.[109] In **Israel** as well, there has been an influx of women brought in by criminal networks illegally from CIS countries, Eastern Europe and developing countries (especially from Central and southern Africa) to work in brothels and escort services. Even those who knew they would end up working as prostitutes did not imagine the terrible conditions to which they would

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[105] Salt and Hogarth, op. cit.

[106] ibid.

[107] *Trafficking in human beings in Bosnia and Herzegovina*. Summary report of the Joint Trafficking Project of the United Nations Mission in Bosnia-Herzegovina and the Office of the High Commissioner for Human Rights, May 2000.

[108] ibid.

[109] L. Feher. *Legal study on the combat of trafficking in women for the purpose of forced prostitution in Hungary*, Country report (Vienna, Boltzman Institute, 1999), p. 56.

be subjected or the cycle of debt bondage that would entrap them. Insufficient investigation appears to have been carried out, however, on the labour market conditions that create fertile ground for such abuses, or on the extent to which the shrinking opportunities for legitimate employment, especially among women, have acted as a push factor in European trafficking.[110]

162. The phenomenon of trafficking for sex is also known all too well in Western Europe. In the **United Kingdom**, for instance, a recent report commissioned by the Home Office focused specifically on trafficking in women for sexual exploitation.[111] Typically, women enter the country presenting themselves with variations of legal and illegal documentation. On reaching their destination, false papers are taken back by the trafficker and the woman's passport is invariably handed over to the person to whom she is now indebted and who has "paid" for her. Though advances may in theory be cancelled over a three-month period, the period of indebtedness may be extended. The reality for most trafficked women is that "they are lucky if they receive any" of the money earned by them, and it is virtually impossible to earn enough to pay off the huge and mounting debt.

Clandestine operations pose challenges in the Americas

163. In the Americas, most of the research on trafficking has focused on the **United States**, and again largely on the sex sector. Yet attention has also been directed to abusive and coercive forms of trafficking in other sectors, including small industry and agriculture. A review conducted for the Government[112] on several "illustrative trafficking and slavery" operations over the past eight years, involving clandestine operations in the form of sweatshops, agricultural work, domestic servitude and other forms of forced labour, found that these operations went unnoticed or were able to exist longer than trafficking operations involving the sex industry.

164. The findings in the Victims of Trafficking and Violence Protection Act of 2000, recently enacted in the **United States**, estimated that 50,000 women and children alone are trafficked to that country every year. There have been reports of trafficking in at least 20 states, with most cases occurring in California, Florida and New York. Primary source countries for the United States are identified as **China**, the **Czech Republic**, **Mexico**, the **Russian Federation**, **Thailand**, **Ukraine** and **Viet Nam**. Women have also been trafficked from **Brazil**, **Honduras**, **Hungary**, the **Republic of Korea**, **Latvia**, **Malaysia**, the **Philippines** and **Poland**, among other countries. Women have been trafficked primarily for the sex industry, though also to provide maid services at hotels, peddle trinkets on subways and buses, work in sweatshops and beg. Their average age is thought to be roughly 20 years old.

From domestic work to drug trafficking

165. While Latin America has certainly not been spared labour trafficking for illicit purposes, data are rare. A recent study suggests a familiar pattern: false promises to work abroad in legitimate employment, payment of travel

[110] With the generally high level of education in this region, including among women, the profile of the persons trafficked can be expected to differ considerably from many hailing from developing countries; the situation in which they end up, however, is largely the same: they are virtually powerless in the hands of their exploiters.

[111] L. Kelly and L. Regan: *Stopping traffic: Exploring the extent of, and responses to, trafficking in women for sexual exploitation in the UK*. Police Research Series, Paper 125. Policing and Reducing Crime Unit, Home Office, United Kingdom, May 2000. An exploratory study based on a survey of police forces, it identified 71 women known to have been trafficked into prostitution in the United Kingdom in 1998. It is argued that there is a "hidden trafficking problem" several times greater than can be documented with certainty, and that there may have been between 142 and 1,420 women trafficked into the United Kingdom during the same period.

[112] A.O. Richard: *International trafficking in women to the United States: A contemporary manifestation of slavery and organized crime*, Center for the Study of Intelligence (Apr. 2000), based on official sources.

costs which then become a debt, forced prostitution, threats and violence to the victims and their families at home, captivity and confiscation of documents. The countries identified as being most affected include **Brazil**, **Colombia**, the **Dominican Republic** and **Ecuador**,[115] but the phenomenon appears to be on a much more limited scale than in other regions. In addition to the sex trade, there is, of course, the use of children as forced labour in the narcotics trade — a practice that has plagued North and South America alike and constitutes one of the worst forms of child labour. A more hidden form of trafficking that ends up in forced labour situations involves work in private households. Domestic workers may be recruited through an intermediary who has a direct relationship with the village of origin and the family; IPEC is looking into village-to-city patterns of recruitment for domestic work involving children in Latin America. A further type of cross-border trafficking that has involved forced labour in the region was illustrated earlier in the case of **Haiti** and the **Dominican Republic.**

No region is spared from the scourge of trafficking

166. In short, while trafficking related to forced labour may take different forms, it is a worldwide phenomenon. People are lured with false promises of legitimate jobs in restaurants, bars, night clubs, factories, plantations and private homes; however, once on the job and isolated, they may find their liberty severely curtailed. Their passports or travel documents are taken away; their movements are restricted; and their wages withheld until the transport debt, the value of which is set at the trafficker's discretion, has been repaid. And because traffickers can resell the women's debts to other traffickers or employers, victims can become caught in a cycle of perpetual debt bondage. In addition, the workers may be prevented from leaving by security guards, violence, threats and retention of their documents.

What are the causes of trafficking?

167. A thorough examination of the economic, social and cultural factors behind the rise in labour trafficking would require a separate study. At the very least, they include: poverty and indebtedness, usually of rural workers and their families; illiteracy and low levels of education, inhibiting decent employment; gender-based discrimination in the labour market, causing unequal access for women to remunerative employment; and even traditional beliefs that devalue girls. The causes of the increase in such trafficking are complex and as yet insufficiently researched.

168. The recent rise in labour trafficking may basically be attributed to imbalances between labour supply and the availability of legal work in a place where the jobseeker is legally entitled to reside. Labour trafficking should not, in theory, take place if the jobseeker has freedom of geographical movement and freedom of access to employment. It occurs because: the worker is below the legal minimum age of employment; the employment is itself illegal; the conditions of work are worse than those prescribed by law; or the worker seeks to reach a country where there are barriers to legal migration. And finally, of course, it exists because someone can make a profit from the exploitation of these imbalances.

169. The rise in trafficking has often been linked with the policies pursued by some governments to promote the exportation of labour for jobs abroad in an attempt to increase remittances and solve domestic unemployment problems. Extreme poverty can obviously be a factor. Yet a number of trafficked migrants have been reasonably well off in their own countries. But

[115] Interpol: *Project Gray Route* (Lyon, 2000).

even they or their families can end up in debt bondage. It is the ensuing moral and financial dilemma that exposes migrants to "unbridled exploitation of their labour in conditions that are close to slavery".[114]

A link with globalization

170. The UNDP's *Human Development Report 1999* listed trafficking as one of the criminal activities found to have increased with the rise of globalization. The economic crisis in East Asia is seen as having resulted in many women being trafficked to escape from sudden poverty.[115]

171. Research undertaken for the ILO's IPEC programme in the Asian region has also identified a relationship between globalization and trends in the trafficking of women and children. The opening of borders and the improvement of transport infrastructure between nations, while bringing positive benefits through increased trade, has also facilitated more migration. As the region struggles to recover from the economic crisis of 1997, the movements of people in search of work across borders has increased the scope for illegal activities including trafficking; and an underlying factor is the high profitability of trafficking, alongside the low chance of being apprehended.

The feminization of migration

172. A key aspect is also the gender dimension of this migratory flow, and the rapid rise in women's labour force participation. The "feminization of migration" has been put forward as a major determinant of labour trafficking. Notably in Asia, women have been moving more in their own right as autonomous economic migrants, rather than as dependants. Sending countries have been mainly **Indonesia**,[116] the **Philippines**, **Sri Lanka** and **Thailand** — and recently also **China**, **Lao People's Democratic Republic** and **Myanmar** — with recipient locations including the Gulf Co-operation Council States, in particular **Kuwait** and **Saudi Arabia**; **Brunei Darussalem**, the Special Administrative Region of Hong Kong, **China**; **Japan**; **Malaysia**; and **Singapore**.

173. When undocumented or illegal flows are also considered, both the number and proportion of women are likely to be higher. Undocumented overseas contract workers from **Indonesia** are estimated to be seven times more than their legal counterparts. And persons leaving **Sri Lanka** through official channels are estimated at only 40 per cent of total migrants.[117] While women and men are now migrating in roughly equal numbers — and the annual growth in female migration has been greater than that for males in most parts of the world in recent years — traditional gender segregation in the labour market tends to limit their opportunities for work to domestic households, entertainment, hotels and restaurants, sales and assembly work in manufacturing. In the European region, the growing feminization of labour migration, together with the increasingly restrictive immigration policies of recipient countries, has created a distinct market demand that is at present being fuelled by traffickers.

Responses to trafficking above the national level

174. At both the regional and international levels, the growing alarm over trafficking has provoked a range of responses. For example, within the Council of Europe, the Committee of Ministers in May 2000 recommended that

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[114] *Migrant workers*, op. cit.

[115] United Nations: *Violence against women*. Report of the Special Rapporteur on violence against women, its causes and consequences. United Nations Commission on Human Rights, 56th session, New York, 29 February 2000 (United Nations doc. E/CN.4/2000/68).

[116] In Indonesia, for example, women working abroad outnumbered male migrants by more than four to one in 1998. In Sri Lanka, there were almost three times more female than male legal labour migrants in 1994 figures, and some 80 per cent of these were domestic maids.

[117] L. Lim and N. Oishi: *International labour migration of Asian women: Distinctive characteristics and policy concerns* (Geneva, ILO, 1996).

its Member States review their legislation and practice with a view to introducing and widely publicizing measures designed to:

- ensure protection of the rights and interests of the victims subjected to trafficking for the purpose of sexual exploitation;
- give absolute priority to assisting the victims through rehabilitation programmes and protection from traffickers;
- apprehend, prosecute and punish all those responsible for trafficking and prevent sex tourism and activities which might lead to forms of trafficking; and
- consider trafficking in human beings for the purposes of sexual exploitation as falling within the scope of international organized crime, thus calling for coordinated action.

Member States were also urged to combat the long-term causes of trafficking, which the document recognized as "often linked to the inequalities between economically developed countries and those that are less developed, particularly by improving the social status as well as the economic condition of women ...".[118] The Council of Europe has started work on reconciling instruments on human rights and diplomatic immunity in response to abuses that have been detected. Member States of the European Union have also been called upon to harmonize the definitions of crime in this field and have a uniform policy on penalties. In addition, Europol, which facilitates coordination of law enforcement activity across Europe, has developed a standard procedure to permit member States to access its support for joint teams involved in cross-border investigation and the arrest of traffickers in human beings.

175. There is a growing consensus that trafficking in persons must be addressed as an urgent human rights concern. The United Nations Office of the High Commissioner for Human Rights bases its work in the area of trafficking on two fundamental principles:

- first, that human rights must be at the core of any credible anti-trafficking strategy; and
- second, that such strategies must be developed and implemented from the perspective of those who most need their human rights protected and promoted.

176. The Organization for Security and Cooperation in Europe (OSCE) has placed human rights at the centre of its action plan to eliminate all forms of traffic in women, based on commitments made by its member States in 1991.[119] Many United Nations initiatives have continued to place their primary emphasis on women and children, particularly those coerced or deceived into working in abusive conditions in the sex industry abroad. However, lumping women and children together can blur understanding of each of these separate issues.

177. Humanitarian law concerns for women and children civilians as victims of armed conflict reinforce this point. The emphasis placed on sexual exploitation, while certainly a matter of grave concern, may also tend to obscure trafficking in human beings that leads to forced labour situations in other circumstances, such as work under confinement in clandestine production

[118] Council of Europe: *Recommendation No. R (2000) of the Committee of Ministers to Member States on action against trafficking in human being for the purpose of sexual exploitation*, 19 May 2000. The recommendation also invited the Council of Europe Member States to consider specific measures regarding research, awareness raising, training, forms of assistance to victims, cooperation between penal and judicial authorities and other matters.

[119] OSCE: *Proposed action plan 2000 for activities to combat trafficking in human beings* (Warsaw, 1999).

units, isolated agricultural holdings and even private homes. The ILO's own toolkit of policy measures, such as standards on sound recruitment procedures and migrant workers, place these issues in a more comprehensive context (see Annex 4). Certainly more work is needed on the socio-economic problems that lie behind trafficking for forced labour. As a lucrative activity, it is unlikely to decrease on its own or be defeated without enhanced international and inter-state cooperation.

The response to trafficking: National measures

178. A wealth of current national initiatives illustrates efforts being made to combat trafficking for forced labour purposes. Where specific legislation on trafficking exists, it is sometimes focused on prostitution.[120] Other legislation provides more generally for penalties for the smuggling or exploitation of immigrants. The Act to Combat Trafficking in Persons and Child Pornography of 1995 criminalizes forced prostitution in **Belgium**, and strengthens victim support mechanisms through special shelter centres. It penalizes involvement in the entrance of a foreigner into that country, when this entails the use of violence, intimidation, coercion or deception. Since the adoption of this Act, the Government of Belgium has issued detailed annual reports that include statistics from local authorities on investigations into working conditions where forced labour has been suspected and on the nationality of trafficked persons.[121]

Countries are acting to protect the victims

179. Under Act No. 40 of 27 March 1998, **Italy** provides for imprisonment of up to 15 years for persons smuggling, controlling and exploiting immigrants, while victims may benefit from social assistance and integration programmes. In 1998, the **Netherlands** increased witness protection in order to provide for more effective prosecution of traffickers. With the creation of incentives for victims of trafficking to come forward, prosecutions against traffickers have increased significantly. These countries, as well as others such as **Austria**, give trafficked women the right to temporary permission to stay pending prosecutions of the accused perpetrators.

180. The Victims of Trafficking and Violence Protection Act of 2000 in the **United States** also provides for the protection of victims of severe forms of trafficking. It introduces increased penalties for traffickers, including life imprisonment for sex trafficking in children and assistance to victims, regardless of their immigration status. The Act also provides for data collection and reporting on trafficking in the United States and abroad, as well as a requirement to withhold some forms of foreign assistance from countries that do not make significant efforts to address the problem. It also calls on the President to carry out international initiatives to enhance economic opportunity for potential victims of trafficking as a means of deterring it. Even before this enactment, a number of successful prosecutions had been brought against traffickers on other legal grounds.

Asian countries identify penalizing traffickers as key

181. Several Asian countries have adopted specific legislation against trafficking over the past decade. In **China**, the 1997 Criminal Law penalizes the abduction, purchase, sale and delivery of women and children. **Cambodia**

[120] The summary of European approaches is taken from: *Combat of trafficking in women for the purpose of forced prostitution: International standards* (Vienna, Ludwig Boltzmann Institute of Human Rights, 2000).

[121] See for example: Service Federal d'Information. *Lutte contre la traite des êtres humains. Rapport annuel 1999* (Brussels, Centre pour l'egalite des chances et la lutte contre le racisme, 2000).

in 1996 adopted its Law on the Suppression of Kidnapping and Trafficking. In 1997, the Prime Minister of **Viet Nam** issued a directive coordinating measures to prevent trafficking through the illegal sending of women and children abroad.

182. **Thailand** has adopted a series of law reforms in recent years, some of which are directed specifically at child prostitution. An Act concerning measures to prevent and suppress trafficking in women and children has been in effect since November 1997.[122] This aims to reinforce official operations to assist the victims trafficked in commercial sexual exploitation, extending coverage to boys and girls under 18 years of age, and including rehabilitation programmes for the victims. A 1997 amendment to the Penal Code stipulates that a sexual offence is committed by those who procure, lure or traffic children for the gratification of another person.[123] **Nepal** has drafted a new legislation on trafficking in persons, as have other countries in the South Asian region. However, the problem of the inadequate enforcement of such laws remains. Many of the governments of the region are now working towards action plans that include components of rescue and rehabilitation, as well as preventive measures.

A mantle of protection for overseas workers

183. The **Philippines** has taken an important lead in protecting its overseas migrant workers against situations such as those involving forced labour. The cornerstone of the new policy is the Migrant Workers and Overseas Filipinos Act of 1995. This provides for strong penalties for illegal recruitment, specifies a minimum age for overseas employment, and establishes official welfare services for Filipino contract workers in their host countries.

184. Overseas employment had been an emotive and controversial topic in the Philippines, given the widespread allegations of maltreatment of domestic workers from that country in the Middle East and of entertainment workers in other parts of East Asia. As in other Asian sender countries, the past two decades have witnessed a pronounced feminization of overseas migration. From only 12 per cent in 1975, women workers comprised more than half of the workforce deployed overseas in 1995. Though the share of those recorded as "entertainers" and "domestic workers" was small at only 1.36 per cent and 13.58 per cent of workers, respectively, in 1994, it had risen considerably compared with previous years. A 1995 White Paper issued by the Department of Labour and Employment of the Philippines found that the majority of new hires in 1994 were in work classified as "vulnerable occupations", with domestic help (26.4 per cent) and entertainers (18.17 per cent) accounting for almost half the total number of new contracts. As many as 95 per cent were women.[124]

185. Under the 1995 legislation, the State is to deploy overseas Filipino workers only in countries where migrant workers' rights are protected. There are heavy penalties for persons found guilty of illegal recruitment, including fines and prison terms of not less than six years. A mechanism for free legal assistance for victims of illegal recruitment is established within the Department of Labor and Employment and its regional offices. The Philippine Government has also created new procedures for: the licensing of private recruitment agencies; the accreditation or evaluation of foreign employers; and setting out minimum standards on a country-specific and skill-specific basis

[122] Act of BE 2540, 1997.

[123] Penal Code Amendment Act (No. 14) of 1997.

[124] R. Amjad, *Philippines and Indonesia: On the way to a migration transition?*, Paper presented at the Conference on the Dynamics of Labour Migration in Asia, Nihon University, Tokyo, Japan, Mar. 1996.

primarily for the occupations considered to be most at risk, including domestic and entertainment work.[125]

136. Most ILO member States have recently been asked to provide information on measures taken to protect victims, to train law enforcement officers, immigration officers and labour inspectors, to investigate organized crime in relation to trafficking in persons and to punish traffickers.[126] The results may provide additional information on the coercive nature of affronts to the principle of the elimination of all forms of forced or compulsory labour. Trafficking for forced labour purposes is unfortunately a growth industry — one which employers, workers and governments would rather see disappear.

[125] M.A. Ahiera-Mangahas: "Violence against women migrant workers: A Philippine reality check", in *Philippine Labour Review*, (Manila) Vol. XX, No. 2, July-Dec. 1996.

[126] *Report of the Committee of Experts*, 89th Session, Geneva, 2001, general observation under Convention No. 29.

9. Prison-linked forced labour: Contemporary dilemmas

Ethical issues posed

187. The core questions of coercion, imposition of penalties and withdrawal of privileges assume an entirely different significance in situations in which people are deprived of their liberty by virtue of their imprisonment. Some of the most difficult policy and ethical issues deal with work performed by prisoners, since not all of it is prohibited forced labour.[127] Work performed under decent circumstances is seen by employers' organizations as advantageous for prisoners: "it could fulfil therapeutic functions and play a role in retaining skills and providing a minimum income for the prisoners or enabling them to compensate the victims of their crimes".[128] However, the work of prisoners raises some complex issues that have long occupied the ILO supervisory bodies, which are the appropriate forums for such a debate. Instead of venturing into this area, this section of the Global Report will draw upon the main issues raised by governments in their annual reports under the follow-up to the Declaration, and the trends they illustrate.

188. Two very different questions have received attention in those reports: prison labour performed in the context of various forms of private enterprise, and prison labour imposed by the State for what it characterizes as anti-social acts. The first is a growing trend, fuelled by a general wave of enthusiasm for privatization, whereas the second one has been diminishing with the decline in the number of regimes that impose forced labour to punish the expression of political views. Both trends form part of the larger dynamic, global picture of forced labour today.

Forms of privatized prison labour on the rise

189. A number of countries are increasingly resorting to privatized prison labour, under various arrangements, in fields ranging from agriculture and stock-breeding to computer component production and airline reservation booking. These developments, which started in developed countries but have spread to others, have spurred serious concern over "both basic rights and unfair competition".[129] The extent of the impact of these arrangements on

[127] See Convention No. 29, Article 2.2(c) and Convention No. 105, Article 1.

[128] ILO: Report of the Committee on the Application of Standards, International Labour Conference, 86th Session, Geneva, June 1998, *Provisional Record*, No. 18, para. 93 (Statement of the Employer members).

[129] *Ibid.*, para. 90 (Statement of the Worker members).

the free labour market largely remains to be measured and analysed, even though the practices are far from new. They are increasing, with private prison services now being marketed internationally.

190. Prison labour can be connected with private entities in many ways. Prisoners may work with a private entity as part of an educational or training scheme; they may labour in workshops within the prison to produce goods sold to private entities in the open market; or they may work outside the prison for a private entity as part of a pre-release scheme. Often, prisoners provide labour within prisons, contributing to the running of correctional facilities managed by private entities. Some prisoners work with private firms outside the prison during the day, returning at night. This has raised questions in relation to the exercise of freedom of association.[130] In the **United States**, prison job fairs have been held in some states, and temporary placement services sometimes recruit within prison walls — practices strongly criticized by workers' organizations. Trade unions point to very low wages and lack of protection for prisoners, who are predominantly from minority groups.

Joint ventures

191. There can also be joint ventures and subcontracting relationships involving public authorities, private entities and the prisoners. For example, the Malaysian Prisons Department has embarked on a new approach of initiating joint venture schemes with the private sector aimed at: providing employment to a growing number of inmates; familiarizing inmates with modern technology to ensure more marketable skills; providing more monetary gains for inmates; and creating employment opportunities in the hope of post-release placement. Under the scheme, the Prisons Department in **Malaysia** makes available the labour force and workshop premises, while private companies provide the machinery, raw materials, technical expertise, marketing and sale of products. The participating firms pay for the rental of prison workshops, utilities, insurance coverage and compensation to the inmates. The Government reports that the inmates participate on a voluntary basis, and receive no punishment if they refuse to do so. This situation raises questions about voluntarism and consent in such circumstances.

The need for supervision and control

192. Many jurisdictions in the **United States** have established private prisons and permitted the contracting out of prison labour — a practice that has increased over the past two decades. According to the Government approximately 77,000 persons (or about 4 per cent of the total inmate population) are incarcerated in state and local facilities owned or managed by private profit-making corporations. Though the federal prison system does not currently permit private prisons or make individuals available to work for private companies, 30 states have legalized the contracting out of prison labour since 1990. Public authorities reportedly retain supervisory control over the operation of the private institutions, either through minimum statutory standards or by a contract between the Government and the private entity. The United States Government reports that it uses the same means of oversight and control of the practice of contracting out prison labour to private enterprise.

[130] See, for example: "Speedrack Products Group, Ltd. vs. National Labour Relations Board" in *Fed Reporter*, Vol. 114, 3rd series, p. 1276, on the question of whether inmates on work release could vote in elections to determine whether workers would be represented by a trade union.

Trade unions voice concerns

193. The International Confederation of Free Trade Unions (ICFTU) has criticized a number of aspects of such systems.[131] It points to instances of prisoners who refused such work losing their chance for early release and being deprived of privileges and time outside their cells. Workers' organizations in other industrialized countries, including **Austria**, **Australia**, **France**, **Germany**, **New Zealand** and the **United Kingdom**, have also expressed serious concern over wage rates and/or prisoners' terms and conditions of work, especially when private enterprise is involved. As in the case of developing countries, governments of industrialized countries have sometimes cited financial reasons for the public-private arrangements.

Economic conditions a push factor

194. In certain countries, notably in Africa, governments have attributed the hiring out of prison labour to the severe economic conditions that have affected their state budgets for the care of prisoners. An example is **Madagascar**, where the hiring out of prison labour is permitted under section 70 of Decree No. 59-121, provided that the work is undertaken for the good of the country. The Government acknowledges that the practice does exist, to an unknown extent, and has requested ILO assistance in amending its law.[132] In other African countries the legislation permits the transfer of prison labour to private enterprises (**Côte d'Ivoire** is one example), but there is limited information available as to the extent to which this practice is actually carried out.

Appropriate safeguards

195. The trend towards private involvement in prison labour poses dilemmas of policy as well as ethics. ILO Convention No. 29, from which the fundamental principle regarding forced labour in part derives, stipulates that the work of convicted prisoners should be carried out under the supervision of a public authority, and that the prisoner is not to be hired to or placed at the service of private individuals, companies or associations. For purposes of principles under the ILO Declaration, what are the appropriate safeguards for prisoners? Where a prisoner gives consent to work for a private enterprise, by what standards can the nature of that consent, the fairness of compensation, the sufficiency of protection against injury and other questions be assessed?

A role for tripartite debate

196. With prisoners already deprived of their liberty, there is an evident risk that private hiring of prison labour can involve exploitation, thus negating any pretence of the exercise of free will. When such practices constitute forced labour, they act to the detriment of both the working prisoners and the economically active population as a whole. Should private profit be derived from public incarceration? Privatized prison labour is nonetheless seen by some as positive — provided that marketable skills are imparted and prisoners engage in such employment and training on an entirely voluntary basis — and ILO constituents could usefully explore these issues more deeply. Since the absence of employment opportunities contributes to criminal behaviour in the first place, consideration of the broader labour market issues familiar to the tripartite constituents may facilitate such discussions.[133]

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[131] The ICFTU states that prisoners work in several sectors, including internationally traded products, at wage rates ranging from US$0.25 to US$1.15 a day. The *General Agreement on Tariffs and Trade (1947)* permits the invocation of exceptions to the free trade and goods for products of prison labour (art. XX). All art. XX exceptions must not be applied in a discriminatory manner or as a disguised restriction on international trade.

[132] Report of the Government of Madagascar under the ILO *Review of annual reports under the Declaration*, Part II, 2001.

[133] An example of an attempt to do so is B. Western and K. Beckett: "How unregulated is the U.S. labour market? The penal system as a labour market institution", in *American Journal of Sociology* (Chicago, Vol. 104, No. 4, Jan. 1999), pp. 1030-1059.

197. While it is, of course, up to the ILO supervisory bodies to continue the discussion in relation to the provisions of ratified Conventions,[151] the Declaration is unequivocal in its call for the elimination of *all* forms of forced or compulsory labour, as a fundamental principle. As experience is gained under the follow-up to the Declaration, it will become clearer what the essence of that principle is in relation to everyday life.

Forced labour for "anti-social acts"

198. A second issue arising from reports under the follow-up to the Declaration relates to the exacting of any kind of compulsory labour from an individual who is deemed by the State to be anti-social, or to have committed any kind of offence of that nature.

199. The Government of **China** has provided a description of its rehabilitation programmes for what it terms minor offences. The Government has stated that the principle of the elimination of all forms of forced and compulsory labour is recognized in China, and that no forced or compulsory labour exists except for persons interned through labour.

Rehabilitation through labour

200. The system of rehabilitation through labour in China is implemented mainly on the basis of a series of laws adopted by the State Council between 1957 and 1982; and also on separate decisions on the prohibitions of drugs, prostitution and whoring, adopted by the National Peoples' Congress in the early 1990s. Since rehabilitation through labour is characterized in China as a compulsory measure for education and reform rather than a criminal punishment, the decision is not made by the People's Court, but reviewed and approved by the Administrative Committee for Rehabilitation through Labour of the provinces (autonomous regions and municipalities directly under the central Government) and of large and medium-sized cities. Moreover, while the initial decision regarding rehabilitation through labour is taken by an administrative committee, there is a non-judicial appeals procedure.

201. The Government stated in its annual report under the Declaration, 2000, that the term for the majority of persons interned for rehabilitation through labour was one year; the minority served from between one-and-a-half years to three years. At the time of this Report, there were 284 organs in charge of rehabilitation through labour in China accommodating 240,000 persons. Forty per cent of these had been interned for offences of larceny, fraud and gambling; 20 per cent for offences of disturbing public order, such as assembling crowds to pick quarrels and stir up troubles; and 40 per cent for offences of repeatedly taking drugs, prostitution and whoring. Citizens were not interned for rehabilitation through labour because of political views or normal religious activities, the Government reported. It further stated that the decisions to intern persons for rehabilitation through labour is to be based solely on the illegality of their acts, irrespective of their ethnic communities, professions and religious beliefs.

Another view of the practice

202. In comments made in the compilation of annual reports under the Declaration, 2001, the International Confederation of Free Trade Unions (ICFTU) has expressed its opinion that the system of rehabilitation as practised in China is incompatible with the principle of the elimination of all forms of forced or compulsory labour — one of the reasons being that the labour is imposed by administrative or other non-judicial bodies. The ICFTU has suggested that a "steep rise" in the number of persons interned for administrative rehabilitation may be related to the increase in workers'

[151] At its December 2000 session, the Committee of Experts on the Application of Conventions and Recommendations reviewed the concerns outlined here, recalling debate at the time of the adoption of Convention No. 29 and recent discussions in the Conference Committee on the Application of Standards. *Report of the Committee of Experts*, 2001, paras. 72-146.

and peasants' protests throughout China in recent years. Many Chinese workers are reported to have incurred sentences involving forced labour under China's criminal laws, including the 1997 Endangering State Security Act. The ICFTU has also questioned whether any specific categories of the population may in practice suffer differentiated treatment, in the light of reports that a high rate of forced labour sentences has been imposed on members of unofficial religious groups and national minorities.

203. The Government has observed that, since its establishment 40 years ago, the system of rehabilitation through labour has played an important role in maintaining social order and preventing crimes. Rehabilitation through labour is thus seen by the Government as a measure suited to the particular circumstances of China in dealing with problems of social security and peace.

204. Within the context of a Memorandum of Understanding between the Government of China and the Office of the United Nations High Commissioner for Human Rights, a workshop on punishment of minor crimes was held in Beijing in February 2001. On this occasion, the High Commissioner recalled that the United Nations Working Group on Arbitrary Detention had deemed re-education through labour "inherently arbitrary". She believed that a serious review of the practice of re-education through labour was justified.

A spectrum of situations and a distilling of principles

205. This part has laid out the spectrum of situations involving forced labour, from the traditional to its newly emerging forms. At their core, the situations all involve a denial of free choice, a negation of voluntary personal action, and the coercion by one human being of another, with impunity. Eliminating all forms of forced or compulsory labour calls for disincentives as well as penalties. A platform for socio-economic development incorporating the elimination of forced labour as one of its planks creates a positive alternative for achieving decent work. Using the "global dynamic picture" portrayed here as background, the next part looks at assistance provided in recent years by the ILO and partner organizations with the goal of eliminating forced and compulsory labour in all its forms.

Part II. ILO assistance towards the elimination of forced and compulsory labour: Experience to date

1. Introduction

Indirect approaches to combating forced labour

206. Aside from activities carried out by the ILO in different regions which are *indirectly* concerned with the objective of eliminating forced labour, its eradication per se has not in the recent past been a priority concern for ILO technical cooperation. The same holds true for other organizations in the United Nations system and international agencies concerned with economic and social development or with the promotion and protection of human rights. Child labour and labour trafficking, along with the promotion of microcredit schemes, have been perhaps the only areas where there has been a concerted international effort to combat forms of forced labour in recent years. Fortunately, with more targeted technical cooperation projects getting under way in relation to the Declaration on Fundamental Principles and Rights at Work, this picture is changing.

Why so few programmes to date?

207. To date, most ILO activity with regard to the eradication of forced and compulsory labour has been in the arena of ILO supervisory bodies, and in certain cases representations or complaints have led to technical assistance. Yet while ILO supervisory bodies have been vigilant in relation to forced labour, their work has not often led directly to programmes of technical cooperation. With a few exceptions, they have focused more on *whether or not* certain conditions of law and practice constitute forced labour, rather than on the *practical measures* and assistance that would be required to overcome certain problems. This may explain why so few ILO assistance projects and activities have so far taken as their entry point the concept of forced or compulsory labour.

208. This is in marked contrast to child labour; indeed, the concentration of effort on this issue has enabled the ILO and its constituents to address broader thematic problems of forced or compulsory labour that have come to light in relation to children. Similarly, heightened awareness of gender and migration issues has led the ILO to deal with issues involving trafficking for forced labour purposes and related questions in technical cooperation projects such as those within the ambit of the Gender Promotion Programme and the Migrant Workers Branch. Work undertaken by the InFocus Programme on Crisis Response and Reconstruction may also lead to technical cooperation relevant to eliminating forced labour.

Improving the synergy between problems highlighted, research and technical cooperation

209. A closer relationship between problems highlighted with regard to implementing forced labour principles and rights and ILO technical cooperation and research would help the ILO work more effectively towards eliminating forced labour. Improving such synergy is the very essence of using the ILO Declaration as a promotional instrument for development. It sees fundamental principles and rights at work as the starting point for the ILO's promotional activities, identifying and overcoming bottlenecks, and using technical assistance in the pursuit of more equitable social and economic development. Before moving forward, it may be useful to glance at the past to provide pointers to the future. Since situations involving forced and compulsory labour touch upon the mandate of a number of United Nations bodies and other international agencies as well as that of the ILO, an adequate initial assessment also has to look beyond the assistance provided by the ILO itself.

2. International action against forced labour: The context of ILO work

Complementary responsibilities towards a shared goal

210. Placing ILO work in context, the elimination of forced and compulsory labour has been a concern of many international organizations, both within and outside the United Nations system. In the 1940s and 1950s, the Joint United Nations/ILO Ad Hoc Committee on Forced Labour played an important role in identifying the main problems of forced and compulsory labour throughout the world at that time, and in preparing the ground for new international standards on both forced labour per se and contemporary forms of slavery.

211. Since then, certain distinctions have been made between slavery and forced labour. In terms of monitoring and supervisory procedures the ILO has held principal responsibility for the abolition of forced labour, and the United Nations for the eradication of slavery. Yet in practical terms, the distinctions cannot be too rigid. For example, the United Nations Working Group on Contemporary Forms of Slavery paid particular attention to trafficking in 1999, and to debt bondage in 2000.

Combined forces enhance the chance of success

212. When it comes to field projects and technical assistance in the area of forced labour, the ILO has frequently coordinated its efforts with other United Nations agencies and international organizations. Joint projects with the United Nations Children's Fund (UNICEF) have addressed the trafficking of children in Africa; and projects with UNICEF and the World Health Organization (WHO) have tackled debt bondage in Asia. These United Nations agencies have also undertaken important initiatives, supporting national measures to eradicate forced labour practices within their own areas of competence. An example is the support by UNICEF to the Committee for the Eradication of Abduction of Women and Children in the **Sudan**.

Moving towards sustainable agriculture is only possible without forced labour

213. Within the United Nations system, the new sustainable agriculture and rural development (SARD) approach encompasses the entire range of environmental, economic and social actions related to agriculture and land use. One of the major functions of the "multifunctional character of agriculture and land", a concept which emerged out of SARD, is to achieve greater

social equity and income opportunity for rural societies.[1] This can only be done without forced labour. The Food and Agriculture Organization (FAO) could also be considered a natural partner in programmes to eradicate agricultural debt bondage, given the importance of land and tenancy reforms among the measures needed to root out this particular system of coercive labour.

214. Outside the United Nations system, the International Organization for Migration (IOM) has played an important role in the trafficking issue, particularly in Europe and Asia. The European Union and the Organization of Security and Co-operation in Europe (OSCE) have also been key actors in these issues in Europe and the Commonwealth of Independent States (CIS) countries; Interpol is another case in point.[2]

215. It is not possible to do justice to the activities of all of these organizations as they may relate to issues to be addressed by ILO technical assistance. Yet, since the ILO does not operate in a vacuum, it is important to take them into account.

United Nations Working Group on Contemporary Forms of Slavery

216. The United Nations has established a number of treaty bodies to receive and analyse reports from the States parties to its various human rights conventions and covenants. Under the slavery conventions, States parties have agreed, but are not obliged by standing treaty body, to send information on measures implemented to the Secretary-General, who in turn communicates such information to the Economic and Social Council. Instead of a treaty body, the Economic and Social Council established in 1975 a Working Group on Contemporary Forms of Slavery (previously the Working Group on Slavery) under the aegis of the United Nations Sub-Commission on the Promotion and Protection of Human Rights.

217. The mandate of this Working Group is to monitor the existence of slavery and the slave trade in all their practices and manifestations, and to review developments in the field of slavery based on all available information. The Working Group has developed a practice of receiving information from whichever government may wish to present it, and also from NGOs. For instance, the 2000 agenda featured a special item on debt bondage, and experts on the issue were invited to make submissions, with financial support from the United Nations Voluntary Trust Fund on Contemporary Forms of Slavery. The Working Group may elicit information or adopt recommendations that could assist the ILO in designing technical cooperation projects to address forced labour problems.[3]

International action on trafficking in persons being addressed by many institutions

218. The past decade has seen a marked rise in activities by the international community against trafficking. Distinctions are sometimes drawn between the human rights system on the one hand, and the crime prevention and criminal justice system on the other — though these two sets of activity can often overlap. Before turning to the ILO's own activities, this section briefly examines the activities and approaches of other international

[1] *The multifunctional character of agriculture and land*. For a fuller explanation, see FAO/Netherlands Conference on the Multifunctional Character of Agriculture and Land, 12-17 September 1999 (Maastricht).

[2] Interpol recently (November 2000) organized a conference on trafficking, which brought together wide representation from the international community, op. cit.

[3] For instance, at its 24th session in 1999, the Working Group on Contemporary Forms of Slavery adopted recommendations on issues including: traffic in persons and the exploitation of the prostitution of others; prevention of trans-border trafficking of children in all its forms; the role of corruption in the perpetuation of slavery and slavery-like practices; migrant workers; domestic workers; the eradication of bonded labour and elimination of child labour; and forced labour generally.

organizations, with particular reference to the agencies and programmes of the United Nations system that are addressing aspects of trafficking relevant to the elimination of forced labour.

219. Among the human rights treaty bodies of the United Nations system, the Committee on the Elimination of Discrimination against Women (CEDAW), the Committee on the Rights of the Child, the Human Rights Committee (HRC), and the Committee on Economic, Social and Cultural Rights (CESCR), have all paid special attention to trafficking as they examined reports of States parties. Special Rapporteurs have also addressed issues such as trafficking related to child prostitution and child pornography. Furthermore, the Working Group on Contemporary Forms of Slavery, of the Sub-Commission on the Commission on Promotion and Protection of Human Rights (which reports to the Commission on Human Rights) has held special sessions on trafficking in recent years.

Integrating a human rights perspective

220. The Office of the High Commissioner for Human Rights (OHCHR) initiated a programme in March 1999 to integrate human rights in anti-trafficking initiatives, with an emphasis on law and policy development. Together with the Council of Europe, the OHCHR has developed a joint trafficking programme for Eastern and Central Europe, with an emphasis on preventive measures. Its field office in Sarajevo has undertaken activities together with international organizations including the International Organization for Migration (IOM), intended to assist victims of trafficking; to facilitate the prosecution of traffickers; and to promote law reform and governmental responsibility. The OHCHR has also been active in anti-trafficking measures in Asia and the Pacific, where it has encouraged national human rights commissions to take up the issue.

Criminal justice plays a key role

221. As regards crime prevention and criminal justice approaches, in March 1999 the United Nations Office for Drug Control and Crime Prevention (UNODCCP) launched its Global Programme against Trafficking in Human Beings. The aim of this programme is to highlight the involvement of organized criminal groups in human smuggling and trafficking, and promote the development of effective criminal justice responses to these problems. The programme, consisting of both policy-oriented research and targeted technical cooperation, has been developed by the Centre for International Crime Prevention (CICP) and the United Nations Interregional Crime and Justice Research Institute (UNICRI). The CICP has been in charge of technical cooperation, and the UNICRI in charge of research methodology and coordination. The International Criminal Police Organization (Interpol) has recently created a new branch within its general secretariat to deal with trafficking. Its most recent international conference on trafficking in women (November 2000) recommended improved international cooperation to facilitate the prosecution of criminals involved in trafficking for sexual exploitation, as well as ratification of the new United Nations Convention against Transnational Organized Crime and its accompanying Protocols.

Abolishing forced labour at the centre of development

222. In the areas of development cooperation and humanitarian assistance related to forced labour, a large number of United Nations and other international agencies are now involved in different ways. The United Nations Development Programme (UNDP) has addressed trafficking both in its global analysis, and increasingly in country and regional programmes. Its *Human Development Report 1999*, for example, identified the trafficking of women and girls as one of the criminal activities found to have increased with the rise of globalization. At the country level, the UNDP has sometimes coordinated United Nations task forces on the issue. The UNDP has launched a regional project to combat the trafficking of women and children in six countries of the Mekong

subregion. The project is broad-based, aiming inter alia to: create new mechanisms for dialogue and action among diverse stakeholders; support the implementation of community-based initiatives to prevent trafficking; and strengthen national and regional capacities for law and its enforcement, both against the perpetrators of trafficking and for the defence of the human rights of the victims.

223. As a further example, the United Nations Children's Fund (UNICEF) has waged campaigns throughout the developing world to alert young children to the dangers of hazardous labour and the sex trade. A number of UNICEF country and regional offices have launched anti-trafficking projects, some of these in collaboration with the ILO itself. Country approaches have included training workshops with law enforcement agencies on sensitization, investigation and the establishment of women's units.

224. The United Nations Development Fund for Women (UNIFEM) has addressed the trafficking of women as part of its Global Campaign for the Elimination of Gender-based Violence. It has been active particularly in Asia, where it works with the ILO in providing technical assistance to women's ministries and also sponsors research and advocacy.[1]

The migration angle on labour trafficking

225. Of other international organizations, the International Organization for Migration (IOM) deals with trafficking as a subset of migration concerns. It has implemented a number of programmes for the voluntary return and reintegration of trafficked persons from a variety of locations, ranging from parts of Europe to Central America. Since 1996, the IOM has implemented a programme in the Mekong subregion, combining return and reintegration of trafficked and other vulnerable women and children. It has also undertaken a series of major research projects, exploring the prevalence of trafficking in Europe and possible preventive measures. Overall the IOM has played an important role in its conceptual and analytical work, identifying some weaknesses in present international approaches to trafficking and proposing methodologies for more rigorous work in the future.

A regional dimension adds to the picture

226. An effective approach to trafficking also requires regional cooperation, given the cross-border movement of persons. At the Ninth Summit of the South Asian Association for Regional Cooperation (SAARC), held in the **Maldives** in 1997, Heads of State or Government pledged to coordinate their efforts, and adopted a resolution calling for a regional convention against trafficking. A draft text of a convention to combat trafficking in women and children for prostitution has been prepared. Within Europe there have been multiple initiatives against trafficking, as indicated earlier in this Report.

227. The Organization for Security and Cooperation in Europe (OSCE) has been a further player. An initial commitment was made by OSCE-participating States to combat trafficking in its 1991 Moscow Document. In its 1996 Stockholm Declaration, the OSCE Parliamentary Assembly expressed grave concern about the practice of trafficking within and beyond OSCE borders, recognizing its link to economic transition and the problem of organized crime. More recently, it has appointed an Adviser on Trafficking Issues and prepared an action plan for OSCE initiatives. This is a multi-faceted programme, including increased attention to trafficking at the political level; integration of anti-trafficking measures into regular core activities; training for OSCE field mission members in the issues; and round tables in key destination countries to enhance victim assistance and cooperation between the various stakeholders.[2]

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[1] UNIFEM: *Trade in human misery: Trafficking in women and children: Asia region* (South Asia Regional Office, 1998).

[2] OSCE: Proposed Action Plan 2000 for activities to combat trafficking in human beings, op. cit.

3. Forced labour and rural workers: Past experience points to the future

Earlier ILO work on rural labour offers some clues

228. With so many international institutions active on issues relating to forced labour, it will be a challenge to avoid overlap. The ILO has a key role to play in keeping the labour dimension on centre stage. Harking back to an earlier era, work done by the ILO and partner institutions on the issues of rural labour provide some clues as to how forced labour problems could be attacked in an integrated way. The strong presence of forced labour practices in rural areas makes this past experience particularly pertinent.

Eradicating indigenous serfdom through integrated programmes: The early experience in Latin America

229. Starting around the middle of the past century, the ILO began to make a significant contribution to the eradication of servile forms of agricultural labour in developing countries. This may be seen as part of a wider national and international push to reform backward agrarian systems, in the interests of both greater social equity and improved agricultural efficiency.

230. The ILO's own concerted efforts to improve the living and working conditions of the rural workforce date back to the early post-war period, particularly in the case of indigenous peoples of Latin America. In 1946 the Governing Body appointed a Committee of Experts to survey living and working conditions among indigenous peoples throughout the world. Based on the work of this Committee, the ILO developed a comprehensive and integrated action programme on the living and working conditions of indigenous peoples, combining research, standard setting and an inter-agency action programme in which it assumed a leadership role. Its major 1953 publication on *indigenous peoples*[6] contained extensive information on the compulsory labour systems which were then widespread in the rural areas of Asia and Latin America. It also documented the various types of coercion and abuse in recruiting indigenous and tribal peoples, including the Latin American system of *enganche*.[7]

[6] ILO: *Indigenous peoples: Living and working conditions of aboriginal populations in independent countries* (Geneva, 1953).

[7] The recruitment system referred to earlier, whereby the labour recruiter receives a lump-sum payment or commission for the workers delivered to an agricultural enterprise.

Working with partners helped achieve results

231. In terms of promotional assistance, a significant achievement of this period was the ILO-led Andean Programme. This programme began with the establishment of action centres in Bolivia, Ecuador and Peru in 1954, and was extended to other Andean countries over the course of the next decade. Its major aim was to improve the living and working conditions of the indigenous peoples of the Andes, in order to facilitate their inclusion within the economic, social and political life of their respective national communities. In addition to collaborating with various United Nations specialized agencies, the ILO also maintained cooperation with other international bodies, including the Inter-American Indian Institute, the Organization of American States and the Inter-American Development Bank. It culminated in a multinational project for Andean community development in the early 1970s, after which responsibility for implementation was handed over to individual States.[8] These programmes are credited with having set the stage for land reform and a concomitant reduction in the incidence of forced or compulsory labour in these countries.

The World Employment Programme and rural development

232. ILO activities concerning rural workers and development generally intensified between the 1950s and 1970s — a period that witnessed a commitment to redistributive agrarian reform programmes throughout the developing world. At that time, other international organizations also gave prominence to equitable development in rural areas, promoting redistributive policies and land tenure reforms.

233. The ILO has made a very significant contribution through the research and programme activities of its World Employment Programme. This was complemented by the adoption of a number of new standards on the rural sector, covering inter alia indigenous peoples, plantation workers, tenants and sharecroppers, rural workers' organizations, and labour inspection in agriculture, as well as more general instruments of relevance to vulnerable rural groups, including instruments on employment policy, social policy and migrant workers. This involved an implicit acknowledgment of the various relationships of control that can coexist in rural settings.

Freedom of association, social protection and developmental research and activities

234. ILO policy towards agricultural and rural workers displays three distinct features. The first concerns the right of association, with an appeal to governments to facilitate the establishment of strong and independent organizations of rural workers.[9] This right comes to life when exercised in the form of collective action to improve the situation of the workers concerned. The second feature lies in the extension to rural workers of elements of the social protection institutions, including labour inspection, that are at least formally available to other workers. The third feature is distinctly developmental, with research and activities devoted to cooperatives, tenants and sharecroppers and the work of rural workers' organizations.[10]

235. The World Employment Conference of 1976 proposed a broad strategy to combat poverty and low incomes based on employment promotion, particularly in rural areas. The ILO has undertaken wide-ranging research

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[8] See J. Rens: "The Andean Programme", in *International Labour Review* (Geneva, ILO), Vol. LXXXIV, No. 6, Dec. 1961, pp. 423-461; and J. Rens: "The development of the Andean Programme and its future", in *International Labour Review* (Geneva, ILO), Vol. LXXXVIII, No. 6, Dec. 1963, pp. 547-563.

[9] Though an early instrument addressed this issue in the Right of Association (Agriculture) Convention, 1921 (No. 11), the Rural Workers' Organisations Convention, 1975 (No. 141), reaffirmed that freedom of association was applicable to all categories of rural workers.

[10] ILO: *Wage workers in agriculture: Conditions of employment and work*, Report for discussion at its tripartite meeting on improving the conditions of employment and work of agricultural wage workers in the context of economic structuring (Geneva, 1996).

and assistance programmes on issues such as the determinants of rural poverty, plantation workers, agrarian systems and land tenure, the impact of new technologies and recruitment systems, women in rural development, rural migration and employment and participation, and organization of the rural poor. A number of special public works programmes have been carried out in developing countries, often targeted at impoverished rural workers.[11]

Recent challenges of rural poverty

236. Rural concerns appear largely to have fallen down the list of the ILO's priorities over the past decade. But the ILO is not alone. As the concern with redistributive policies and structural reforms have disappeared from international development agendas, no agency has been able to deal effectively with a pattern of rural poverty that is worsening in some areas. According to official data 75 per cent of the world's poor people live in rural areas.[12] Pockets of poverty are concentrated in remote areas with low quality land, often accompanied by a shortage of reliable rainfall or irrigation. The isolation of the population, who are often ethnic minorities who may not speak the national language, poses particular challenges for central policy-makers when it comes to eliminating forced labour practices. The term "rural workers" must also be viewed with caution, since this may mask the mix of income sources and relationships from which they derive their livelihoods (tenancy, smallholdings, seasonal employment, rural non-farm income such as crafts or occasional construction work, etc.).

237. During the height of the adjustment era, the prevailing orthodoxies became well enough known. Policies generally aimed to promote market forces in agriculture, making markets more flexible for land as well as labour, and removing subsidies. In so far as land reform remained on development agendas, the emphasis was on market-assisted approaches. On the whole, communal tenure systems were considered a constraint to agricultural efficiency; and the trend towards promoting individual land tenure, though in many ways positively received, may in some cases have increased the pool of those without asset security because their plots were simply too small. There are signs that some earlier approaches are now being reviewed, amid concerns over the continuing escalation of acute rural poverty. A recent World Bank review, for example, recognized the advantages of communal tenure systems together with the importance of a more equal asset distribution.[13] Achieving greater social equality and income opportunity for rural societies also forms part of sustainable agriculture; this presupposes the elimination of forced labour.

Wage labourers and landless are the poorest

238. Land reform continued through the 1990s, albeit at a slower pace, with a shift to market-led reform that included competitive inputs and services for new smallholders. Yet one major problem has been the growth of absolute rural landlessness or near-landlessness. Regional poverty reviews conducted by the International Fund for Agricultural Development confirm that in most of the developing world, lack of access to land is associated with low incomes and rural poverty: landlessness and poverty risk go together in countries such as **Chile**, **China**, **Côte d'Ivoire**, **Ethiopia**, **Kenya**, **India**, the **Philippines**, the **United Republic of Tanzania** and **Zimbabwe**.

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[11] ILO: *The challenge of rural poverty*: Progress report on research and technical cooperation concerning rural employment, agrarian institutions and policies, World Employment Programme, third edition (Geneva, 1985).

[12] International Fund for Agricultural Development (IFAD): *Rural Poverty Report 2001*, The challenge of ending rural poverty (New York, Oxford University Press, 2001), Ch. 1, pp. 1-8.

[13] K. Deininger and H. Binswanger: "The evolution of the World Bank's land policy: Principles, experience and future challenges", in: *The World Bank Research Observer* (Washington, DC, World Bank), Vol. 14, No. 2, Aug. 1999.

Wage labourers, especially landless or casually employed farmworkers, are almost everywhere among those likeliest to be poor, according to IFAD. Indigenous origin and location in remote areas also have a high correlation with poverty, particularly in Latin America, and the exclusion of indigenous minorities from good land is also associated with persistent rural poverty in Asia. The barriers to progress for the rural poor often form a vicious circle. A distinction between transitory poverty and chronic poverty may have particular relevance as regards strategies for escape from debt-related forced or compulsory labour.

Why can women inherit debt bondage, but not land?

239. Rural poverty has a particularly serious impact on women, who remain disproportionately illiterate and asset-poor; and this tendency is growing. Breaking down the barriers to women's control of rural assets, especially land, is crucial in the fight against poverty. It is a cruel irony that in some countries a woman may be subjected to a bonded labour debt but not be able to buy or inherit the land she could use to produce income to cancel it. The gender dimension weighs in heavily, although there is much less female disadvantage in **Lao People's Democratic Republic**, **Sri Lanka** and **Viet Nam**, for example, on account of cultural and policy factors.

Taking freedom of labour for granted

240. The most recent report prepared by IFAD observed that achieving the target of halving poverty by 2015 would only be possible if aid concentrated much more than in the past on reducing rural poverty through stimulating agricultural growth and especially food production, yield and employment. What is striking about studies in this area is that they assume that rural labour is acting as a free agent — a circumstance that cannot always be taken for granted. Cross-sectoral policies on rural work could have an important impact on the likelihood of people avoiding and escaping forced labour situations.

4. ILO technical assistance and technical cooperation in relation to the elimination of forced or compulsory labour

To date, forced labour has involved little technical cooperation

241. The ILO has long provided technical assistance in relation to ratified Conventions. However, its research and technical cooperation activities on forced labour have occurred somewhat incidentally to the activities of programmes that have other principal goals. These involve particularly work related to the elimination of the worst forms of child labour, improvement of the status of migrants and women workers (especially when victimized by trafficking), promotion of microcredit schemes and policy support for public works projects that are free of forced labour. Four years from now, it should be possible to identify criteria for assessing the effectiveness of technical cooperation projects undertaken in the context of the follow-up to the Declaration that are aimed *specifically* at making forced labour a problem of the past. Ideas for such projects come in the first instance from ILO constituents, whether the suggestions are expressed directly in reports under the Declaration, in the dialogue occurring within the supervisory machinery, or in interaction with ILO area offices and multidisciplinary advisory teams.

IPEC's important contribution

242. Research and project activities undertaken within the framework of the International Programme on the Elimination of Child Labour (IPEC) have brought revealing insights into practices involving debt bondage and trafficking. The programme received an added impetus from the adoption of the Worst Forms of Child Labour Convention, 1999 (No. 182), which targets practices (among others) such as child slavery, forced labour, trafficking, debt bondage, serfdom and prostitution. Important lessons can be learned from the IPEC experience to date, for analysing and coping with the promotion of employment and recruitment systems as they affect both adults and children.

243. Building on earlier IPEC activities, other ILO units have been able to capitalize on the research, data gathering, legislative inputs and other programme components in order to design programmes to eliminate forced labour as it affects the population in general. This can best be illustrated by the IPEC experience in the Asian region, which has given rise to broader

ILO programmes against bonded labour and trafficking. In the African region IPEC activities, as yet at an earlier stage of development, may eventually stimulate more comprehensive programmes of action against forced and compulsory labour.

Developing statistical methods has been crucial

244. IPEC's methodology has been of intrinsic value, both for addressing the more specific concerns of child labour, and in generating the data, consensus and participation needed for the eventual concertation of broader social programmes. The development of statistical methods and data has been one crucial element, raising awareness of the degree of the problems and preparing the ground for subsequent advocacy work. The Statistical Information and Monitoring Programme on Child Labour (SIMPOC), launched in 1998, has assisted countries in collecting quality data and developing an understanding of child labour problems. The IPEC methodology has also recognized the need for capacity building, and the importance of expanding and strengthening networks of partners, including NGOs and other agencies of the United Nations system. In addition to this, there have been comprehensive and direct action programmes to withdraw children from exploitative work; and to prevent child labour through addressing the root causes related to poverty, ignorance, inadequate systems of law enforcement, lack of development opportunities, and lack of remunerative employment opportunities for adults. Such a focus has inevitably drawn attention to the structural factors behind child labour.

245. IPEC has also undertaken a number of *rapid assessments* of different aspects of child labour, including issues of forced and compulsory labour. These seek to collect quantitative and qualitative information related to the worst forms of child labour, which are often very sensitive to investigate, and to describe the magnitude, character, causes and consequences of those forms of child labour. *Rapid assessments* having a bearing on forced labour, which are now under way or planned, include child soldiers in the **Philippines**; child domestic workers in several African, Asian and Latin American countries; children in bondage in **Nepal**; and child trafficking in that country and in the refugee camps of the countries of the Mekong area.

246. Of the more than 80 IPEC projects aimed at children working in domestic service, 32 of them work with children who are subjected to the worst forms of child labour. These have resulted in the discovery of instances of forced labour beyond those that are already known. IPEC has begun to address the *related* phenomenon in **Haiti**, which involves girls being placed in private homes to perform domestic work under conditions that can constitute forced labour. Aimed at girls who are at risk or already in domestic service, IPEC activities are geared to analysis of the situation, prevention, capacity building and rehabilitation. Interventions of this type are expected to expand in other countries as well, since children in domestic service are among the most vulnerable and exploited of all. In addition, IPEC cooperates in projects to combat labour trafficking where children are involved.

Relevant IPEC activities in the African region

247. In late 1998, IPEC, with financial support from the United States, launched a subregional programme of action on child trafficking in nine countries of Central and Western Africa: **Benin**, **Burkina Faso**, **Cameroon**, **Côte d'Ivoire**, **Gabon**, **Ghana**, **Mali**, **Nigeria** and **Togo**. Impetus for the programme came from a subregional workshop on trafficking in child domestic workers, in particular girls in domestic service, organized by UNICEF together with the ILO in **Benin** in July 1998.

248. By late 2000, a synthesis report, compiled on the basis of eight country studies, had identified the main trends. It examined cultural and historical factors behind current patterns of child labour migration and placement; the

main trafficking routes; and the distinctions between sending countries, receiving countries, and those which were a mixture of both. It found reasons to believe that the economic growth of some African countries may have helped to aggravate the problem of trafficking in children, with the disintegration of traditional family structures also seen as a contributing factor. Socio-cultural, economic, juridical and political factors were also identified as having played a role, in that the work of children tended to be socially accepted, and that in the villages of some countries the authority of the chief was placed de facto above the national law. On the whole, it was problematic to study the phenomenon of trafficking because of the sensitivity of the topic, and because it was difficult to draw distinctions between cultural placement and placement for labour exploitation.

249. The first phase of the project has clearly elicited a positive response. All governments have expressed their will to combat this trafficking; and in **Benin**, **Mali** and **Togo** specific programmes have been formulated by governments or NGOs. Efforts at bilateral collaboration are under way. For example, there has been an agreement between **Benin**, **Ghana**, **Nigeria** and **Togo** to facilitate the repatriation of the victims of trafficking, and most of the countries concerned have prepared national plans of action.

Relevant IPEC activities in Asia

250. In addition to its work in **Nepal** (see below), IPEC has been active in relation to forced labour among children in **Indonesia**, the **Philippines** and **Sri Lanka**. In **Indonesia**, IPEC has assisted in the rehabilitation of children working on the *jermal* fishing platforms. These are the children who, rather than attend school, can be confined to the *jermal* platforms day and night for as long as three months. While most recruitment is conducted through adult workers from the same or nearby villages, there have been cases of forced recruitment and kidnapping which have targeted the most vulnerable children such as street children. Through IPEC activities, counselling services are offered to the children, and project staff receive advice on appropriate interventions and activities. Linkages are established with local health facilities and there are formal or non-formal education programmes to help children complete their nine years of basic education. In the case of older children who are of employable age, they are referred to the skills training programmes run by the Ministry of Manpower or the Ministry of Education and Culture. Parents of the working children are provided with credit, enabling them to undertake income-generation activities. In the **Philippines**, a similar programme provides for the rehabilitation of children who have been engaged in deep-sea fishing and diving.

251. In **Sri Lanka**, IPEC has planned an action programme to prevent the forced conscription of children and youth by militant groups. In this country, provinces in northern and eastern regions are affected by armed conflict, resulting in large-scale displacement of the civilian population. The planned Sarvodaya Action Programme to prevent child labour will focus on certain areas of northern and eastern Sri Lanka, particularly the internal displacement camps.

IPEC and forced labour in Latin America

252. In early 2001, IPEC embarked on a programme for the elimination of commercial sexual exploitation of children and adolescents in **Brazil** and **Paraguay**. The programme aims at identifying gaps in the existing legal systems on the subject and incorporating recommendations for improved legislation at the national level. It also seeks to establish reliable information concerning the commercial sexual exploitation of children, including possible child trafficking networks, which can be used in the design and implementation of public interventions in this area. The project is strategically located in border areas of the two countries, covering Foz do Iguacu in Brazil and Ciudad del Este in Paraguay. It envisages broad-based cooperation

between the various sectors of national and local governments, the social partners and civil society organizations. IPEC has also been investigating networks for the procuring of child domestic workers in the Andean region.

Trafficking of children in the Mekong subregion

253. In mid-1997, with support from the **United Kingdom**, IPEC launched its project for combating the trafficking in children and their exploitation in prostitution and other intolerable forms of child labour in the Mekong subregion. A first phase of the project involved a programme of research into the root causes of trafficking within the subregion. An initial report provided new insights into the problem, and formulated suggestions for an active programme of measures to combat trafficking. The findings, together with an ILO-IPEC proposed framework for action, were presented at a consultation meeting held in Bangkok in July 1998. The purpose of the meeting — attended by key technical personnel from **Cambodia**, **China**, **Lao People's Democratic Republic**, **Thailand** and **Viet Nam** — was to secure preliminary stakeholder ownership of any new project, and to combat trafficking as a cross-border and subregional issue with the commitment of all five countries.

254. A second stage of the project, which commenced in December 1999, now aims more broadly at reducing labour exploitation of women and children, by combating trafficking in the Greater Mekong subregion. It is now implemented by IPEC in collaboration with the ILO's Gender Promotion Programme.

255. A decision was taken to include women in the scope of the project for a number of reasons. First, trafficking for labour exploitation — though gender-selective in that women and girls tend to be more vulnerable to it than men and boys — cannot usefully be addressed through a cut-off point in terms of age. The circumstances that lead women and young girls into trafficking tend to be similar. Moreover, particularly in marginalized communities, many young girls under 18 or even 15 years of age tend to be married or beyond the age of compulsory schooling, and may have to contribute to their own and their family's livelihood. Second, the involvement of women is crucial to any effective strategy to combat trafficking in children. Measures to deal with the root causes of trafficking, such as poverty and broken families, are likely to prove more sustainable when there is a specific focus on mothers and in particular on the female heads of household who tend to be the poorest of the poor. Third, the role of local women in community watch efforts is key.

Capacity building, legislative reform, law enforcement, alternative income opportunities

256. The Greater Mekong project therefore has a capacity-building component aimed at creating an environment in which it is possible to combat trafficking in women and children effectively. Coordination mechanisms have been established at subregional, national and local levels; and assistance has been provided for improving legislation, law enforcement and policy-making. The project aims to promote laws that adopt a harmonious approach to trafficking in each of the countries concerned. In target areas, it will monitor access to the services of real or potential value to trafficked women and children, or to those at risk. The project is also based on the premise that trafficking can best be prevented by empowering families, in particular female family members, to take greater control over their lives through more productive livelihoods and a wider range of economic opportunities. And training will be provided to selected stakeholder groups including members of the justice system and other law enforcement agents, local government officials and community-based organizations. In each country, a national project advisory committee is to be comprised of representatives of the ILO, the Government, employers' and workers' organizations and NGOs.

ILO work relating to migrant workers also helps fight forced labour

257. Migrant workers, a group highlighted in the Preamble to the ILO Declaration, run the risk of ending up in situations of forced labour. Over the past two decades, the ILO has extended assistance to many governments in strengthening their supervision over the recruitment of migrant workers and developing effective policy and legislative frameworks.[1] In Asia, a UNDP-funded regional programme on international labour migration (1986-93) facilitated knowledge-sharing and information flow among 13 countries on topics such as: the effective selection, licensing and regulation of the activities of private recruitment agencies; the listing of agencies reported to have engaged in malpractices; the adoption of a common "model contract"; and the strengthening of the services of labour attaches abroad. A similar but smaller programme was carried out by the ILO for six Arab States in the early 1990s. In 1994 the ILO established an informal network on foreign labour in Central and Eastern Europe which has provided information on best practices in the field of labour migration policy. Another project stemmed from an ILO/UNHCR regional meeting in 1992 and brought the Governments of **Algeria, Morocco** and **Tunisia** together with those of **Belgium**, **France**, **Germany**, **Italy** and **Spain** to consider programmes that would reduce the need of Maghrebians to leave their countries for employment abroad. More recently, the ILO has also undertaken studies on trafficking of migrants in several countries, including the **Czech Republic**, **Hungary**, **Lithuania**, and the **Russian Federation**, and provided input into the consultations leading up to the adoption of the new United Nations instruments on trafficking in persons. Internal migration involving forced labour in **Bolivia** is being addressed by a Declaration project funded by the **Netherlands**.

Other activities related to trafficking, migration and gender promotion

258. The Gender Promotion Programme in collaboration with the Migration Branch is also developing a manual of "good practices", aimed at preparing women better for international migration and protecting them from exploitative and abusive forms of labour. By providing specific examples of best practices and approaches, together with the reasons for their success, it aims to alert governments, ILO constituents and other interested groups to the scope for improved collaboration in protecting the rights of female migrant workers, including the right to escape forced labour.

Coordinated action against bonded labour in Nepal

259. ILO efforts to eliminate bonded labour in **Nepal** have involved a range of related ILO action, starting in recent years with IPEC. Since its inception in Nepal in 1995, IPEC has given high priority to the elimination of child bonded labour in particular and bonded labour in general. It has undertaken a range of complementary activities to this effect, including research, technical assistance for new legislation to abolish bonded labour, workshops, and targeted project activities in those areas of the country where bonded labour has been most widespread. Building on this extensive experience, IPEC and the Infocus Programme for Promoting the Declaration have recently prepared a more general project to combat the bonded labour system.

260. In August 1998, IPEC and UNICEF launched a joint project entitled "Towards elimination of child (bonded) labour in Nepal". The project was supported by several Italian trade unions in collaboration with the Confederation of Italian Industry (CONFINDUSTRIA), and implemented in the districts of western Nepal where children were working as *kamaiya* bonded labourers in brick kilns, stone quarries, hotels, restaurants and carpet factories. Its main objectives have been to increase the capacity of employers',

[1] ILO: *Migrant workers*, op. cit.

workers' and non-governmental organizations to prevent and combat child labour; and to prevent child bonded labour in communities, withdrawing selected children from bondage-type labour situations and providing them and their families with alternatives. The project has revolved around children between the ages of 6-14 working in debt bondage in agriculture, industry and the recreation sector, with special attention given to girls. The employers', workers' and non-governmental organizations have each been implementing different components of the project (see more on initiatives by the social partners below).

261. These and related project activities have been complemented by research and analysis. An ILO-commissioned study analysed the factors which have contributed to the perpetuation of the bonded labour system in **Nepal**, and contributed towards the design of a concerted strategy for dismantling the practice.[15] It proposed a strategy for transforming the *kamaiya* relationship into a wage-labour relationship, reducing dependence on the employer for credit, and identifying alternative sources of credit. Separate recommendations were formulated to the Government, trade unions, NGOs, and international agencies and bilateral donors, identifying distinct roles for these different actors in an overall strategy for structural transformation.

Bringing the pertinent ministries together to tackle the problem

262. As part of the ILO's efforts to encourage the Nepali Government to eliminate bonded labour, a national workshop was organized jointly with the Ministry of Land Reform and Management (MOLRM) in November 1999, to develop a national plan of action against child bonded labour. A wide range of national and international organizations, including United Nations agencies and donor governments, participated. The workshop developed a framework of actions and recommended a set of interventions to combat bonded labour, including: education, training and income-generation activities; complementary policy development; legislative action; and preparation of ratification of pertinent ILO Conventions. The ILO has provided technical inputs to the drafting of the Bonded Labour (Abolition) Bill in line with the ILO's forced labour Conventions. It has also helped the Ministry of Women, Children and Social Welfare (MOWCSW) identify certain gaps in the existing relevant laws of the country.[16]

Comprehensive project under the Declaration blends in earlier efforts

263. To consolidate these five years of experience in Nepal, IPEC, the Social Finance Unit and the Declaration Programme have now embarked on plans for a comprehensive project to combat the bonded labour system. Since previous ILO efforts, while helpful, were rather limited and scattered, the new project is intended to address bonded labour and child bonded labour in a more holistic manner, targeting the families of bonded workers. Moreover, a recent amendment to the Trade Unions Act and the introduction of minimum wages for agricultural workers have provided part of the requisite legal and institutional framework to complement the problems addressed by the Bonded Labour Bill. The new project has two main components, the first for institutional and capacity building, including strengthening the capacity of the agricultural workers' organizations, and the second for direct support to bonded labourers and their families.

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[15] S. Sharma, op. cit.

[16] In the meantime two separate draft Bills on trafficking were formulated in Nepal, one with assistance from UNICEF, the other with the assistance of the United Kingdom Government. At the time of writing the MOWCSW had incorporated the most important elements of these two separate drafts, preparing a consolidated version that has been passed to the Ministry of Law and Justice for review.

The contribution of microfinance initiatives: Using a continuous dialogue approach

264. A further thematic approach of ILO work with effects on the elimination of forced labour has been the use of microfinance initiatives to improve the access of bonded labourers to financial markets. The Social Finance Unit in the ILO has been pioneering microfinance techniques to deal with the problem of forced labour by strengthening the economic position of actual or potential victims.

265. Continuous dialogue among ILO constituents, and the search for mutually agreed solutions, are key features of the approach. Institutions have to be tailored to the cultural environment and local needs. While still at an early stage of development, the approach has been of particular importance in the South Asian region, where an innovative new ILO project aims to use these techniques to break the cycle of debt bondage. Steps have now been taken to develop more general programmes of financial credit and assistance in the Asian region in order to tackle the roots of the problem, which are seen to lie in the deficient operation of rural labour and financial markets.

Promoting microfinance in South Asia

266. In 1999, the ILO's Social Finance Unit launched a three-year project, with support from the Government of the **Netherlands**, aimed at preventing exploitative forms of labour that are linked to family indebtedness. Microfinance schemes constitute the main tool in a project that covers **Bangladesh**, **India**, **Nepal** and **Pakistan**. Its basic objective is to induce existing microfinance institutions to develop, test and offer savings and loans products specifically designed for the families at risk of falling into bonded labour situations.

267. The underlying premise behind the project is that greater access to financial services at the village or grass-roots level can reduce the comparative importance of the landowner or employer as a moneylender, and thereby minimize the importance of debts as a cause for bonded labour. However, given that bonded labour exists because of a complex web of relations that are not exclusively financial, the project also includes additional areas of activity. Complementing its core function of providing microfinance, it also organizes accompanying support in the areas of education, primary health care, income-generating activities, mobilizing public opinion and general empowerment.

268. The project builds on earlier methodological work carried out by the Social Finance Unit under the bondage eradication standards and tools (BEST) programme, which has examined the economic, financial and also cultural circumstances under which impoverished families fall into bonded labour situations. The research component aims to identify ways in which debt repayments through labour services may be corrupted into debt bondage. Research is also focusing on such social practices as dowry, given that this can be a principal factor behind the indebtedness of the families affected. Attention is also being paid to the linkage between economic empowerment and increased leverage in social dialogue, when addressing situations of severe labour exploitation.

269. While the initial emphasis was on the prevention of indebtedness, a very positive response in **India**, **Nepal** and **Pakistan** to the way in which the project has addressed bonded labour has contributed to some shift in focus towards the rehabilitation of freed bonded labourers in order to prevent them from falling back into bondage. In **India**, the project is being implemented in the State of Andhra Pradesh, where it will strengthen groups of former bonded labourers and support efforts for further identification of possible pockets of bonded labour. Other Indian states have also expressed interest in participating in the project. In **Bangladesh**, where there is no official survey of the situation of bonded labour, the project will concentrate mainly on situations where family indebtedness induces exploitative forms of

labour. Renewed efforts by the Government of **Pakistan** to combat bonded labour will be supported by providing microfinance services to the bonded labourers who have recently been released. In **Nepal**, the project will supplement efforts of the project referred to above, by providing microfinance services to the recently freed *kamaiyas*.

Employment-intensive infrastructure programmes

270. Another type of ILO work related to eliminating forced labour has been in public works programmes. In 1995, Commitment 3 of the Copenhagen Declaration on Social Development and Programme of Action of the World Summit for Social Development, which addressed the promotion of full employment, renewed interest in ILO work related to employment-intensive infrastructure programmes that had begun in the 1970s. By demonstrating how infrastructure building and maintenance can be done with cost-effective labour-based methods, the ILO Employment-Intensive Investment Programme has contributed to creating sustainable employment with locally available resources. The Programme helps establish capacity in the domestic construction industry by developing small enterprises which create jobs through the application of labour-based methods. Early concerns over the possible use of forced or compulsory labour in schemes such as these led the ILO to develop ways to introduce respect for fundamental labour standards as part of the Programme.

271. Based on its experience over the years, the Programme has drawn up general guidelines on labour policies and practices that include, among other issues, specific suggestions for ensuring that labour in employment-intensive projects is in fact voluntary.[17] Among them are promotion of community involvement in projects and constant monitoring to ensure that programme objectives are being achieved, along with a series of safeguards. These include: telling workers what they are to be paid; educating them so that they can double-check to ensure proper payment of wages; reporting infringements; and being alert to signs of unfree labour, particularly where intermediaries are involved. The ILO's contribution in this area could be usefully employed in projects sponsored by other organizations such as the World Bank. Indeed, the Bank recently renewed its interest in public works projects as key to its new social protection strategy. Similarly, the ILO has advised the World Food Programme for many years on ways to avoid forced labour in its field activities.

Getting ideas from Declaration reports and the supervisory machinery

272. Ideas for ILO technical assistance and technical cooperation arise from dialogue between the ILO and its constituents. The follow-up to the Declaration offers governments the opportunity to examine their own situations and to formulate requests for technical cooperation. Employers' and workers' organizations can also suggest them. In its first annual report under the Declaration, the Government of **Nepal** acknowledged that there had been a traditional practice of debt bondage, and described steps already taken to address it. The Government then abolished the practice in law, and called upon the international community to join with it, trade unions and NGOs in taking steps to eliminate it in practice. The ILO and other donors responded quickly. The second round of annual reports has elicited requests for a study to determine the scope and nature of the problem in **Madagascar**. Ideas may be spurred by the International Labour Office based on its own research, standards-related and advocacy work.

[17] D. Tajgman and J. de Veen: *Employment-intensive infrastructure programmes: Labour policies and practices* (Geneva, ILO, 1998).

Supervisory procedures can lead to significant action

273. Given the very high number of ratifications of Conventions Nos. 29 and 105, the supervisory machinery may play an active role in suggesting ideas for technical cooperation. The work of two major Commissions of Inquiry over the past two decades, first concerning allegations involving **Haiti** and the **Dominican Republic** in the early 1980s, and most recently concerning forced labour in **Myanmar**, has been described earlier. Since 1990, allegations made in representations under article 24 of the ILO Constitution in relation to the forced labour Conventions have been declared receivable by the Governing Body for: **Brazil** (Conventions Nos. 29 and 105); **Guatemala** (Conventions Nos. 29 and 105); **Iraq** (Convention No. 105); **Myanmar** (Convention No. 29); and **Senegal** (Convention No. 105). In most instances the Government's attention has been drawn to problems of forced labour in law and practice, as well as to measures that could be taken to deal with the problem.

274. In addition, the Committee of Experts on the Application of Conventions and Recommendations and the Conference Committee on the Application of Standards regularly address a range of issues under the forced labour Conventions. The work of this supervisory machinery can be a rich source of ideas for technical assistance or technical cooperation that might assist governments — at their request — in coming closer to the goal of eliminating all forms of forced or compulsory labour. With this in mind, a few themes highlighted by those bodies are recalled here for purposes of generating such ideas. This thematic approach to technical cooperation would also foster information exchange among countries, thus speeding up the spread of successful strategies.

Bonded labour in Asia: Statistics, release and rehabilitation programmes, enforcement

275. Accurate data not only contribute towards the development of the most effective systems to combat bonded labour but also provide a sound basis for assessing the effectiveness of those systems. The supervisory machinery has pointed to the need for further research, baseline data, case studies and improved statistical methodology to ascertain the real incidence of bonded labour in the Asian region, particularly in **Bangladesh**, **India** and **Pakistan**. It has also detected the need for more effective law enforcement. A technical cooperation programme could perhaps be built around these themes, focusing in the first instance on statistical concerns and detailed research on the nature of the problems in specific agricultural and industrial sectors.

276. In **India**, for instance, the Government has been urged to undertake a comprehensive survey, using a valid statistical methodology broken down by gender. It would call upon the services of an independent body to assist in developing the methodology and conducting the survey. Similar concerns have been expressed regarding statistics on bonded labour of children and adults in **Pakistan**. Both countries have also been asked to produce more detailed information on programmes for the release and rehabilitation of bonded labourers, and on effective arrangements for taking action against those persons responsible for instigating and perpetuating bonded labour.

Forced labour in agriculture, forestry and remote rural areas

277. Allegations of forced labour in agriculture, plantations and new areas of rural development have been a concern of the CEACR in parts of Asia and Latin America. The impact of these practices on such vulnerable groups as indigenous peoples and other ethnic minorities is a frequent feature. In **Indonesia,** for example, there is information suggesting that tribal Dayak people have been subjected to conditions of debt bondage in industrial logging concessions, industrial forest plantations and other community-designed community development projects in East Kalimantan. The need to

safeguard traditional forms of land use and occupation has been stressed, as have increased protective measures such as inspections, investigation or supervision particularly as regards wages actually paid, the operation of company stores, the system of vouchers in use in these stores and other aspects of the conditions of work in the forestry sector.

278. In Latin America, the persistent attention paid by the ILO supervisory bodies to the plight of Haitian migrant workers in the **Dominican Republic** led to a range of technical advisory services and technical cooperation activities relating to: recruitment methods; stabilization of the plantation labour force; publicity to inter-State agreements; payment of wages and contracts of employment; freedom of movement for plantation workers; non-confiscation of Haitian workers' documents; improved labour inspection services; and regularization of the status of Haitians who had lived for a long period of time in the **Dominican Republic**. Since that time the Government of the **Dominican Republic** has been seeking to tackle these and related problems, in close collaboration with the ILO; the results have been described earlier in the text.

279. In **Brazil**, where allegations concerning forced labour and debt servitude in rural areas have been made by the Latin American Central of Workers (CLAT) and the ICFTU, the supervisory bodies have concentrated on deficiencies in the legislation itself and especially the inadequacy of its enforcement. While the law has recently increased penalties for conduct related to forced labour practices, concerns remain about the effectiveness of inspection and the failure to impose sanctions, in particular in rural areas. The labour inspectorate is unable, alone, to combat and suppress cases of forced labour; it must be able to rely on the support of a strong judicial system capable of imposing severe punishment on violators within a reasonable period of time. The Government has been urged to consider adopting consolidated legislation on forced labour establishing both civil and criminal responsibility in such cases, and giving labour prosecutors the necessary competence to bring criminal cases against persons who subject others to forced labour practices. Such measures could become part of a broader technical cooperation initiative.

280. In **Paraguay** and **Peru** the concerns have centred on the exaction of forced labour from indigenous peoples. In **Paraguay**, where a 1997 communication from the World Confederation of Labour (WCL) had indicated that the working conditions of indigenous persons in ranches suggested an extensive practice of forced labour, the Government has been requested to provide information on the possibility of establishing adequate labour inspection services in areas with a high concentration of indigenous peoples. In **Peru**, where a 1997 communication from the WCL referred to forced labour practices affecting indigenous peoples in the Amazon region, the Government has been requested to provide information on the measures that it intends to take to remedy the situation, and on sanctions it has imposed.

281. The comments of the supervisory bodies have often — but not always — been followed by important initiatives by the government concerned and technical assistance from the ILO. More systematic research could follow up on the issues initially raised by the supervisory machinery, to identify recent trends and possible policy and project interventions aimed at improvements. The ILO has recently embarked on research of this nature in **Bolivia** and **Peru**. In **Bolivia**, in a project initiated under the impetus of the Declaration and with funding from the **Netherlands**, the emphasis has been on the recruitment and employment conditions for seasonal migrant workers in the

commercial agriculture of the eastern lowlands. In **Peru** research has focused mainly on the coercive practices relating to mineral extraction.[18]

Slavery-like practices in Africa

282. In parts of Africa, the ILO supervisory bodies have dealt with *slavery-like practices*. An example is **Mauritania**, where issues of contemporary forms of slavery have continued to be raised over the past decade. In recommendations to eliminate slavery-like practices, the focus has been on law reform; for example, the proposal has been made to extend the prohibition on any form of forced labour to work relationships that may have existed from historic times. The project now being launched under the Declaration, supported by a contribution from **France**, will be broader in scope, taking into account the socio-economic context in the search for ways to overcome obstacles to the elimination of forced labour. A similar project in **Benin**, started in 2000, also addresses forced labour among other matters.

283. In **Sudan**, there has been extensive reference to slavery and abductions within the context of the armed conflict. The Government has referred to efforts being made to investigate into and resolve the continuing allegations of slavery and slavery-like practices, such as those made by the ICFTU in 1999. Consultations between the Government and the ILO are exploring ways in which technical cooperation might make a contribution to addressing the concerns in a practical way.

Trafficking for forced labour purposes

284. Trafficking, either of children or adults, has occasionally been addressed in country-specific observations. An example is **Bangladesh**, where the Government had referred to an increase in the phenomenon of trafficking, mainly for prostitution.[19] Questions raised about penalties imposed for exaction of forced labour, and their enforcement, as well as different government initiatives, could contain the germ of a project idea that would encompass a broad range of activities.

[18] Comments have been presented by the National Federation of Miners, Metal Workers and Iron and Steel Workers of Peru (FNTMMSP) concerning alleged dishonest hiring practices known as *enganche* on the part of individuals, for the most part in Puno and Cuzco, who recruit from mining enterprises holding licences from the National Directorate of Mines. See *Report of the Committee of Experts, 1999*. A recent study has been conducted on forced labour aspects of mining in the Altiplano region of Peru: K. Romero: *Trabajo forzoso en la minería artesanal de oro en el Perú — El caso de la Mina La Rinconada Puno* (manuscript, 2000).

[19] United Nations Committee on the Elimination of Discrimination against Women, *Concluding observations of the Committee on the Elimination of Discrimination against Women: Bangladesh*, New York, seventeenth session, 7–25 July 1997.

5. Involvement of the social partners

Forced labour, while severely condemned, has not been top priority for activities

285. While many policy statements endorsing the principle of the elimination of all forms of forced or compulsory labour have been issued by employers' and workers' organizations, the topic has not often been at centre stage in their own activities. This may simply reflect the general lack of interest in forced labour problems within international and national forums as a whole, or a low level of presence in the economic sectors or geographical areas where the phenomena are most often found. For workers' organizations, restrictions on freedom of association of workers in agriculture and domestic service in many countries[20] seriously impede their ability to do something about forced labour. The subject matter itself may seem rather removed from the daily concerns of organized employers. Nevertheless, there have been some recent developments on both the part of employers' and workers' organizations.

Employers have long taken a firm stance against forced labour

286. At the International Labour Conference and other meetings, employers' organizations from around the world have vigorously condemned the use of forced labour. The work of these organizations in their own countries to promote sound business and labour practices could certainly contribute towards preventing forced labour situations. Projects to strengthen these organizations and to raise awareness around issues of social responsibility may thus be seen as indirect support to the goals of the ILO Declaration and its follow-up, including of course to the elimination of all forms of forced or compulsory labour. Employers' organizations and the ILO could provide advisory services to employers or landowners who are seeking alternatives to forced labour where it has been detected.

287. The Global Compact, the United Nations system business partnership arrangement, offers a prime opportunity for helping businesses understand how they may be unwittingly contributing to the existence of forced labour. It also offers sources of information about how to run a commercial, service or agricultural undertaking in a way that avoids the emergence of debt bondage or other forms of labour servitude. This may involve putting pressure on governments to alter certain framework conditions such as

[20] ILO: *Your voice at work*, op. cit.

policy on pricing or taxation that is possibly discouraging the employment of labour under conditions of full freedom. The International Organisation of Employers (IOE) is preparing a training package for its members on the Global Compact and it will, of course, cover the elimination of all forms of forced or compulsory labour.

Codes of conduct add another tool

288. Codes of conduct adopted by employers on their own initiative sometimes contain direct or indirect references to the avoidance of forced labour within the supply chain.[21] The Management and Corporate Citizenship Programme in the ILO is tracking the burgeoning number of various types of codes and researching the methods enterprises use to give effect to their labour policy objectives, with special attention to enterprises in developing countries. A related area of work is looking at ways in which respect for basic principles incorporated in international labour standards may help enterprises increase their productivity and competitiveness through improved social performance.

289. Enterprises sometimes negotiate voluntary private initiatives with workers' organizations. For instance, in September 2000, the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF), the Latin-American Coordination of Banana Unions (COLSIBA), the National Federation of Labour of the Philippines, and three multinational enterprises involved in banana production, issued a joint communiqué in which the firms pledged their commitment to the forced labour Conventions, among others. The International Federation of Building and Wood Workers (IFBWW) and one of the world's largest retail furniture chains have concluded a code of conduct on workers' rights, including freedom from forced labour, slavery or non-voluntary work in prisons. It specifies that workers are not to be asked to make deposits or leave their identification as pledges with their employers.[22]

Trade unions have played an essential watchdog role

290. In relation to the elimination of forced labour, activities undertaken by workers' organizations have essentially fallen into the categories of engaging in advocacy, research, organizing, bargaining and building alliances. At the international level, organizations of the social partners have certainly played a major role in bringing situations of forced and compulsory labour out into the open, at the International Labour Conference and in other forums. As already seen, the International Confederation of Free Trade Unions (ICFTU),[23] the World Confederation of Labour (WCL), the World Federation of Trade Unions (WFTU) and other international, regional and national trade unions have actively used the supervisory machinery in relation to forced labour. In addition, debt-related servitude has been challenged jointly by trade unions and NGOs such as Anti-Slavery International. Much of the effort of workers' organizations around forced labour has been linked to concerns over child labour, particularly in the areas of agriculture and domestic service.

291. Among the international trade secretariats, the IUF has sought ways to build strategic alliances with the non-waged and self-employed sectors in rural areas. As a study commissioned by the IUF concluded,

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[21] J. Diller, "A social conscience in the global marketplace? Labour dimension of codes of conduct, social labelling and investor initiatives", in *International Labour Review* (Geneva), Vol. 138, No. 2, 1999, pp. 99-129.

[22] http://www.ifbww.org/~fitbb/INFO_PUBS_SOLIDAR/FaxNews_124.html [consulted on 15 Dec 2000].

[23] A. Linard: *Migration and globalization: The new slaves* (Geneva, ICFTU, 1998); the ICFTU launched a campaign against the use of forced and slave labour worldwide in 1999 which presses for the suspension of the European Union generalized system of preferences in Myanmar and Pakistan.

"waged agricultural workers have become potential allies of disadvantaged rural groups such as subsistence peasants, tenants and sharecroppers, the unemployed and the landless ... During the last decade many peasant organizations have grown stronger in relation to the broadening of their structures and the support they get from other groups such as trade unions and NGOs".[24]

Workers' organizations take action at the national and local level

292. At the national level, a number of trade union organizations are offering support to cooperatives and organizations of smallholders by assisting them with service and helping them adapt their structures. This is occurring in, for example, **Brazil**, **Costa Rica**, **Ecuador**, **Ghana**, **Honduras**, **India**, **Mali**, **Nicaragua**, **Niger**, the **Philippines** and **Togo**.[25] Strengthening participatory organizations forms part of the strategy that workers' organizations have been pursuing to have respect for core labour standards embedded in policies on sustainable agriculture.

293. National-level workers' organizations have at times played an important role in documenting problems of forced labour. An example is a 1998 publication on bonded brick kiln workers in **Pakistan**, by the All Pakistan Federation of Labour (APFOL).[26] This study examines the implementation of a 1989 Supreme Court decision, aimed at bringing an end to bonded labour in the brick kiln industry and other economic sectors. It reviews government initiatives on the subject, and also presents the findings of APFOL's own sample survey covering 74 brick kilns in the area of Rawalpindi and Islamabad in late 1997. The study puts forward a number of recommendations, concerning: the extinguishment of debt; the need to strengthen vigilance committees; and education and training programmes. While the responsibility of the State is highlighted, the study also stresses the need for strong public opinion if action against forced labour is to be truly effective. "The ultimate responsibility for taking initiative and coming to the rescue of unfortunate brethren in brick kilns, creating awareness about their plight and moulding public opinion in their favour, will lie on the shoulders of trade unions and their federations, because brick kiln workers belong to their fold. This is a stupendous responsibility and a big challenge for the trade unions to accept."[27]

A national consultation on bonded labour resolves to act

294. In **India** too, there are signs that trade unions are now stepping up their efforts to support bonded labourers. In an important recommendation, India's Study Group on Bonded Labour, referred to earlier in the text, urged that efforts should be made to organize bonded labourers at both local and national levels. In September 2000, representatives of major Indian national trade unions and social activists held a national consultation on forced labour, the ILO Declaration and reporting mechanisms. They decided to set up a permanent consultative body to collaborate in efforts for the abolition of forced labour and debt bondage in India and resolved to form trade unions in sectors where bonded labourers existed. The media at national, state and local levels were urged to focus adequate attention on the incidence of bonded labour, and on the harassment which bonded labour activists suffered at the hands of their employers.[28]

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[24] IUF: *Land and Freedom*, chapter on "Summary of key issues", http://www.iuf.org/iuf/lf-01.htm

[25] IUF: ibid.

[26] All Pakistan Federation of Labour: *Bonded Brick Kiln Workers — 1989 Supreme Court Judgment and After* (Islamabad, 1998, Khursheed Printers).

[27] ibid.

[28] Centre for Education and Communication: *Trade Union-NGO Consultative Body to fight for the abolition of forced labour in India*, press release (New Delhi, 26 September 2000).

Box 5.1
Marking Abolition of Slavery Day — 2 December

The 2nd of December is International Day for the Abolition of Slavery.

On the occasion in 2000, United Nations Secretary-General Kofi Annan commented that, "New forms of slavery, such as sexual exploitation of children, child labour, bonded labour, serfdom, migrant labour, domestic labour, forced labour, slavery for ritual or religious purposes and trafficking pose a great challenge to all of us." He saluted all those who had committed themselves to ending slavery in its various forms.

Following a decision reached at an earlier two-day national consultation involving Government, trade unions and non-governmental organizations in India, celebrations to observe 2 December as National No Forced Labour Day occurred throughout India. Rallies, workshops and public awareness campaigns and petitions marked the occasion to demand the abolition of bonded labour in practice.

Sources: *The Hindu*, 3 Dec. 2000. Press release located at http://www.unhcr.ch.

295. In Latin America, workers' organizations in **Brazil** have provided assistance for the victims of forced labour. This has taken many forms, ranging from policy advice to specific programmes of support and public campaigns. In the mid 1990s representatives of trade unions, including the Agricultural Workers Confederation (CONTAG), participated in the National Forum against Violence, together with government officials and members of human rights organizations. Local trade unions have also participated in important awareness-raising campaigns aiming to alert potential migrant workers of the danger of moving to remote areas.

The social partners are involved in ILO projects

296. Organizations of employers and workers are also playing an increasing role in ILO projects that seek to eliminate forced labour. By way of example, the consensus-based approach of the Social Finance Unit for addressing bonded labour seeks the involvement of the social partners throughout its projects. The Italian Social Partners' Initiative in **Nepal**, implemented under the auspices of the IPEC programme for tackling child bonded labour under the *kamaiya* system, has designed components to be undertaken by employers' and workers' organizations respectively. This is a particularly constructive approach; not only does it ensure that the elimination of this form of bonded labour enjoys some visibility in social dialogue at the national level, but it also reinforces the involvement of employers' and workers' organizations in project implementation.

297. Under this project, the ILO and the Nepal Trade Union Congress (NTUC) agreed in May 1999 to an action programme to eliminate debt bondage of children in hotels, restaurants and carpet industries in Kathmandu, Lalitpur, Bhaktapur, Chitwan, Kaski and Dang districts. It has targeted around 1,000 children, including migrants and non-migrants. The strategies are to remove children from work and to rehabilitate them with support for their education, vocational training and micro-enterprise development. An advisory committee includes representatives from a broad cross-section of government, industry, the social partners and civil society.

298. In the same year, the ILO and the General Federation of Nepalese Trade Unions (GEFONT) signed an agreement for a further action programme for the elimination of bonded child labour in western Nepal. The project commenced in June 1999, when it started to identify social workers for each of five districts, and set up 15 village development committees to implement the programme. These committees have held mass meetings with the Kamaiya Liberation Front (KLF) to spread awareness about child bonded labour and bonded labour more generally. GEFONT has also organized

five trade union seminars in different districts to develop action against bonded labour, and to encourage implementation of the minimum wage for agricultural workers. It has been involved in campaigning for legislation and in identifying *kamaya* families for the development of cooperatives.

299. Such initiatives, while not yet common, illustrate how the involvement of organizations of employers and workers in projects to combat forced labour may reinforce their impact.

6. Assessing effectiveness: Concluding comments

Drawing on lessons from the past

300. In this first Global Report on the elimination of all forms of forced or compulsory labour, it is important to draw some key lessons from past experience — but above all to look forward.

301. At certain historical periods, the ILO has played a significant role in eradicating forced labour and the conditions that foster it, using the various means at the ILO's disposal. A framework of standards has been essential, to provide the legislative basis and social consensus around which a programme of promotional activities could be built. In cases in which problems have been largely rural, the ILO has been able to launch programmes for the promotion and protection of rural workers' rights, and to complement these with specific employment and development interventions.

302. There is an inherent danger of spreading resources too thinly, and promising more than can be delivered. The Andean Indian Programme of the 1960s and 1970s may be viewed as a success story because, while having some fairly broad social and developmental objectives, it had a target population in a specific number of countries and enjoyed the support of the governments and social partners of the region. In this context, the ILO became a leading United Nations agency by adopting new international standards on rural workers and promoting the participation of a range of other international agencies in a coordinated programme. The rural aspects of the World Employment Programme, and the more recent IPEC programme, have displayed similar features, with a mix of relevant standards, research and technical cooperation with finite and realistic objectives.

303. Forced labour has proved a difficult issue to tackle owing to its very characteristics, and also because of the reluctance of many governments to recognize the problem. But the recent example of **Nepal**, which has decreed bonded labour abolished and is seeking immediate ILO support for its eradication in practice, shows what can be done to make the most of the present situation. Yet even with political will, the very identification of a problem and the promotion of awareness within society as to the need to combat it can pose difficult challenges.

Action is needed across the spectrum

304. All of this suggests that action is called for across the spectrum, using a range of tools. The nature of modern forced labour calls for a truly global

programme of awareness building, backed by meticulous research and development of appropriate statistical methods to identify the problems and their dimensions. Targeted and high-profile technical cooperation programmes in specific regions could: address the structural roots of forced labour; strengthen the occupational organizations that challenge it; conduct broad campaigns against it; and establish and reinforce the labour administration and criminal justice institutions needed to back up policy interventions with punishment of the perpetrators. There is a parallel need to embed these initiatives in the broader decent work agenda, to prevent forced labour from emerging in the first place.

Part III. Towards an action plan against forced labour

1. The need for a concerted action plan

Concentrating efforts to put the issue on the radar screen

305. Forced labour as such has not really caught the world's attention. It takes different forms — and their common features might seem abstract at first glance. Yet forced or compulsory labour makes headlines almost daily in stories of trafficking in persons, imprisonment in sweatshops and the slavery-like conditions on some plantations and even in private homes. The gravity of some of the situations described in this Report calls for a concerted programme of international action, in which the ILO may in some cases take the lead. This final part puts forward some ideas about how such a programme of action might be developed, and what its overall approach and different components could be. A concentration of effort would place forced and compulsory labour more firmly on the agenda of governments and ILO constituents, and of the international community as a whole.

2. The scope of an ILO action plan against forced labour: General considerations

The first step: Raising awareness and identifying the problem

306. The initial challenge is to raise awareness of forced labour in all its forms among the ILO's own constituents and among international development agencies. This is a complex but vitally important task. For effective progress to be made, it is imperative that the global community understand that:

- the elimination of all forms of forced or compulsory labour is a prerequisite for the success of broader development goals such as sustainable agriculture and poverty reduction for women and men in all sectors;
- forced labour is a continuing problem of serious proportions, rather than a relic of a bygone age;
- action will be required on several fronts.

307. An essential first step is that member States should be assisted to identify the nature and dimensions of forced labour within and across their national borders. As the Expert Advisers observed in their first review of annual reports under the Declaration, it was encouraging that some countries had recognized the problem. Such frankness merits a positive response. Thus the ILO has been able to respond swiftly in support of **Nepal**'s new programme against bonded labour. The second annual review has brought forward new statements of interest in carrying out detailed investigations into forms of forced labour that are reported to occur, and these too merit support. **Madagascar** is a case in point.

308. In the context of responding to such requests, the ILO now has the opportunity to launch a concentrated new programme of data gathering and research, analysis, awareness building and practical activities. Major analytical tasks still need to be undertaken to capture the diverse facets of forced labour. Several member States have indicated that they would need assistance even to identify the nature of the problem, and to provide relevant data (e.g. **Madagascar**). Developing appropriate survey techniques and methodology, adapted to different economies, would be a daunting exercise in itself.

309. There will always be differences between incremental and more radical approaches to the eradication of forced and compulsory labour in diverse cultural settings. Certain dilemmas were identified in the discussion of bonded labour in Asia. What is the role of social finance when coercive labour systems are deeply rooted in economic and also political structures that protect elites? What happens when an international agency or NGO aims to redeem bonded workers or chattel slaves by paying their "debts"? How useful is it to eradicate bonded labour by law without putting accompanying policies in place to ensure rescue, rehabilitation, and alternative employment and livelihood in the longer term? Questions of this nature abound in relation to the sustainable elimination of forced labour.

A range of interventions possible

310. Despite such caveats, there would seem to be strong arguments for a coordinated action plan by the ILO to assist member States in the eradication of forced and compulsory labour. Member States may wish to deal separately with such problems as forced labour in agriculture, domestic work or the informal sector; bonded labour; trafficking for forced labour purposes and other issues. They may wish to place initial emphasis on statistical methods and data gathering, in order to assess the incidence of forced labour in different sectors of the economy; or they may need assistance with law reform and intercountry law enforcement cooperation. As would often appear to be the case, they may require help with strengthening labour inspection and judicial systems for the more effective prosecution of those responsible. Member States may also wish to emphasize prevention programmes, identifying those most at risk and seeking to develop alternative forms of livelihood. They can and should provide the legislative framework to foster organizational initiatives for the workers affected by bonded labour. Pilot and sectoral programmes could prepare the ground for alternative livelihoods for persons released from forced labour situations. Whatever the emphasis chosen, the overall strategy should include:

- problem identification (surveys, mapping);
- awareness raising (addressing the different audiences of the general public, the victims and the perpetrators);
- prevention (targeted warnings, investigative mechanisms, policies and action that avoid forced labour);
- remedies (release, rehabilitation, etc.);
- punishment of the perpetrators.

Heightening the visibility of ILO work

311. In a complementary fashion, the ILO should make more visible its initiatives to give concrete effect to the commitment to provide technical cooperation under the Declaration and its follow-up. At the country level it may be best to concentrate in the first instance on a limited number of high-profile situations, where the government has demonstrated the political will to address the problems. Concentrating publicity on extreme cases may also enhance understanding of what forced labour is, since the term is sometimes bandied about rather casually to refer to a wide range of substandard working conditions.

3. Forced labour: A common global responsibility

A global commitment is needed

312. An effective programme against contemporary forms of forced labour requires a strong global commitment from a number of organizations within the United Nations system and its specialized agencies, and from regional bodies and development banks. Long-standing problems of forced or coercive labour might be linked with agrarian institutions that are badly in need of reform from the viewpoint of sustainable agriculture, productivity and human rights concerns. Trafficking in persons, while it displays forced labour dimensions of direct concern to the ILO, also needs to be addressed from other perspectives. The ILO's work combating forced labour can support the efforts of other institutions — but only if they have greater awareness of it.

313. Unless the ILO acts in close collaboration with partner agencies, it will only have a limited impact on many of these concerns. It may take a leadership position as regards the labour and employment aspects of these problems, but on many issues it cannot act alone. A major effort is required to increase international awareness of the dimensions of compulsory labour and of the labour market aspects of phenomena related closely to it. The ILO can continue to offer its expertise in relation to forced labour to development institutions that have gone on record as wanting to avoid such practices in their own activities. More detailed guidelines could assist them in briefing governments and private contractors on ways in which to ensure that they do not unwittingly aid the emergence of new or the perpetuation of old patterns of forced labour.

4. Specific issues for future action

Thematic research and analysis

314. A tailor-made programme of research is required to identify the exact local, social, cultural and economic factors that, in certain countries and under certain circumstances, give rise to or sustain forced labour. No one, it seems, would argue that the use of forced labour is an economically viable proposition for any State. Indeed, States are bound to eliminate it. The leadership of the business community as a whole is also committed to the eradication of forced labour systems. And yet some forms of forced labour can clearly be highly profitable activities for criminal gangs and individuals who step over the line of human dignity in their behaviour. A deeper understanding of how forced labour operates in practice can pave the way for more effective action against the perpetrators. The follow-up to the Declaration presents an opportunity for countries to assess the situation, involve the social partners, review national legislation, identify action needed, build coalitions to undertake it, and engage in awareness raising.

Sharpening the focus on who is affected by forced labour

315. It is also important to pinpoint more precisely which groups of the population, by gender, age and ethnic origin, are most affected. The enhanced vulnerability of children to forced or compulsory labour is well known. There is reason to believe that women and men differ in their particular risks of new and differing forms of coercion. And there is evidence that indigenous peoples and other racial or ethnic minorities are especially vulnerable. The incidence of forced labour among such groups in different regions, as well as their attitudes and defence mechanisms, need to be documented on a more systematic basis. The United Nations World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, to be held from 28 August to 1 September 2001 in Durban, may provide an additional source of information that could advance the state of knowledge on forced labour.

316. There are also indications that forced and compulsory labour can easily affect migrant workers. The ILO's own operational programme has so far focused mainly on international migration for employment. At the national level in various continents, certain forms of internal migration, for example seasonal migration in commercial agriculture or migration to cities to engage in domestic work, are particularly likely to be associated with debt bondage.

These issues need to be explored further and an examination made of: recruitment and repatriation methods; payment systems; conditions of work and housing; and forms of representation and redress.

Coming to grips with the labour market dimension

317. It would seem that, on the whole, the labour market aspects of forced or compulsory labour have not been examined in the light of current conditions. Why is forced or compulsory labour persisting in the face of poverty reduction strategies and more open economies? Focus so far has been on the push, but not the pull, factors. Why does it exist in some poverty contexts but not others? How are broader macroeconomic prescriptions such as greater labour market flexibility and adjustment policies impacting on the incidence of forced or compulsory labour? What can be done within the context of macroeconomic and sectoral policy to prevent or eliminate instances of forced or compulsory labour? How has pursuit of decentralization policies impacted on the government's ability to prevent, detect and remedy forced labour? Research being undertaken by the ILO Socio-Economic Security Programme on issues and control may provide some pointers — but much will remain to be done.

Forced labour and trafficking

What is the ILO's niche in relation to trafficking?

318. With so many human rights, humanitarian and development agencies now addressing different aspects of trafficking in persons, it is important to identify the particular niche for the ILO. The ILO is now developing its own strategy and has embarked on a limited number of projects focusing on prevention of labour trafficking for those at risk. The knowledge base is also expanding. It could set up a broader programme to investigate and document the conditions of persons trafficked for forced labour purposes in all regions, as a contribution to more effective pursuit of the perpetrators. Such an approach could involve efforts to release and rehabilitate the victims, both in their countries of origin and in countries where they work in conditions of forced labour.

319. A key question is the role that the ILO and its constituents might play when faced with organized crime and sophisticated criminal cartels. It certainly has competence over labour inspection, and improved labour administration can work creatively with law enforcement agencies to stamp out abusive conditions in underground enterprises. Criminal investigations conducted by others, including those of trafficking across borders, could be aided by expertise in labour inspection as well as other fields. The Government of **France**, for example, takes such a cross-ministerial approach, involving the ministries responsible for justice, customs, social security and labour in pursuing clandestine operations that rely on trafficked labour. More general awareness of the ILO Declaration and the fundamental human rights Conventions — and also of more specific instruments on migrant workers, employment agencies and avoidance of abuses in payment practices — can obviously be of value, as can shared experience among labour inspectorates. The massive growth of the shadow economy, and of the vast numbers of vulnerable persons who fall victim to it, represent a monumental challenge for the ILO's social partners as well.

320. Although the ILO adopted a relatively low profile in the preparation of the new United Nations Convention on Organized Crime and its two Protocols on the trafficking in persons and smuggling of migrants, the ILO definition of forced or compulsory labour is implicitly recognized by these

recent instruments. The ILO knowledge base in this area, including through reporting under the ILO Declaration and in relation to ratified Conventions,[1] could lend support to stop trafficking for forced labour purposes.

321. There is a need to define and articulate as clearly as possible the specific role of the ILO and its constituents, and of the national agencies responsible for the enforcement of labour law, in enhancing national and international efforts to combat the scourge of trafficking that ends up as forced or compulsory labour.

Addressing forced labour through rural development

322. A comprehensive strategy against forced labour must address the roots of the problem, which very often lie in the lack of income and asset security of the people whose freedom is at stake. Overall, this may require some reinforcement of the ILO's technical capacities in relation to rural employment and development, the strengthening of rural workers' organizations, and the creation of the conditions for genuine social dialogue in a rural setting.

Elimination of forced labour is part of sustainable development

323. This might be pursued through a variety of innovative approaches to rural development. Within the United Nations system there is now an increasing emphasis on partnerships for poverty reduction, involving different agencies in accordance with their specific areas of competence. There might also be links involving the ILO, the United Nations and the private sector, as for example under the Global Compact. Under this scenario, the ILO can seek the inclusion of a specific component for the eradication of forced labour in any rural development programme that is planned or under way in an area where its incidence has been detected. Greater attention might be given to eradicating forced labour in the context of pursuing sustainable agriculture and rural development policies. This could include: awareness raising; legal support; microcredit; control of the activities of recruiting intermediaries; and other activities as relevant. In countries where a serious incidence of forced labour has been detected, the ILO could also encourage governments to include forced labour concerns in action taken within the United Nations Development Assistance Framework (UNDAF). UNDAF provides the operational framework for donor and agency coordination that is designed to treat structural and social concerns on the same footing as macroeconomic and financial issues. In countries where forced labour is a significant problem, its elimination belongs squarely within comprehensive development frameworks. Similarly, ILO work planned for giving country-level expression to the decent work concept would create an opportunity to develop the data and arguments to support such an approach.

A look at all stages of migration is needed

324. Rather than support rural development only in places of origin, the ILO could also develop integrated projects that address: the entire cycle of

[1] At its December 2000 session, the Committee of Experts on the Application of Conventions and Recommendations requested all governments to include in their next reports under Convention No. 29 information on measures taken or contemplated to prevent, suppress and punish trafficking in persons for purposes of exploitation. It requested information on measures designed to strengthen the active investigation of organized crime with regard to trafficking in persons, the exploitation of the prostitution of others and the running of sweatshops, including: the provision of adequate material and human resources to law enforcement agencies, the specific training of law enforcement officers to address the problems of trafficking in persons, and international cooperation between law enforcement agencies with a view to preventing and combating the trafficking in persons.

recruitment; transport; employment conditions in the place of destination where there is a risk of forced labour occurring; and repatriation to the place of origin. This approach is best adapted to cases of seasonal labour migration in commercial agriculture, either within or across national frontiers, where there have been indications of coercive recruitment and employment practices. It would be of particular importance in cases of large-scale migration, for example those involving indigenous workers in Latin America to the sugar, cotton, coffee and fruit harvests. Certain national programmes have already sought an integrated approach to these concerns, such as those of the National Rural Workers' Programme in **Mexico** which addresses living, recruitment, transport and working conditions in places of both origin and destination, and also throughout the migratory cycle. Approaches of this nature could well be planned and supported by the ILO in other countries and regions where rural migrant workers are at risk of coercion.

Labour inspection and law enforcement

Lateral support for enforcing a ban on forced labour

325. Stamping out forced labour requires particular vigilance by law enforcement institutions. Special programmes, such as those established at the federal level in **Brazil** to tackle forced labour in remote and rural areas, appear to have paid some dividends. The strengthening of labour inspection services can obviously be an important measure, and preventive labour inspection strategies offer considerable promise in the case of eliminating forced labour.[2] Training labour inspectors to keep a watchful eye for situations that might involve forced labour will also be important. Yet formal sector institutions are generally inadequate to investigate forced labour allegations in the rural and informal sectors. There is a need to explore innovative measures for addressing the problems, in consultation with the social partners. One option, that can also be used as a tool for mobilization, is to seek relief for the victims of forced labour through well-publicized public interest litigation. Another is to form broad civil society coalitions, with the participation of employers' and workers' organizations, and to bring instances of forced labour to the attention of such public bodies as Ombuds and national human rights institutions. Religious organizations have often been powerful allies in the fight against forced labour. Similar coalitions can also be formed at the local level, in areas where forced labour problems have been detected.

326. The initiatives would need to be documented, and lessons of best practice widely disseminated. The **Nepal** project will be a case in point, but there should be others as well to provide models for the design of similar emergency as well as longer term programmes.

Statistics

327. Given the current state of knowledge, this Global Report has not ventured overall statistics concerning the incidence of forced and compulsory labour around the world today. Yet attempts should now be made to devise appropriate methodologies to permit detection of forced labour practices in labour market information and other statistics. Where direct statistics are unavailable, appropriate proxies could be identified. Reliable data would facilitate the tracking of progress between global reports on the elimination of all

[2] This strategy, being developed as part of the ILO's SafeWork Programme, is explained at: http://mirror/public/english/protection/safework/labinsp/index.htm

forms of forced or compulsory labour at the four-year intervals called for by the follow-up to the ILO Declaration.

328. While it is clearly critical to have a firmer grasp of the dimension of the numbers of bonded labourers involved, the need for data is not limited to the supply side of the equation. Gaining a clearer picture of the profiles of persons who hold others in bondage would provide useful clues on how to eliminate the practice in a sustainable way. Well publicized statistics on prosecutions and penalties for those having violated the law may in themselves have a certain deterrent effect.

Putting the spotlight on domestic work

329. Eliminating forced or compulsory labour occurring in the context of domestic work poses special challenges. But they must be met. The phenomenon has important gender and child labour aspects, and is sometimes the destination point for the victims of labour trafficking. IPEC initiatives in this area have developed promising approaches. The ILO could enhance its own action on domestic work as well as encourage other institutions to do the same, with the aim of gaining a clearer picture of how forced or compulsory labour manifests itself in domestic work, and of ascertaining what the best options for tackling this problem in various national contexts for both children and adults might be.

Reaching out to the vulnerable: Challenges for the social partners

330. For employers' and workers' organizations, tackling forced or compulsory labour may mean reaching out beyond their normal clients and constituents. The victims are the vulnerable who are difficult to organize — at least along conventional trade union lines — and who are almost invariably too poor to pay regular dues. The perpetrators tend to be business renegades or criminals who do not belong to employers' organizations or chambers of commerce or industry.

331. There have been many cases where workers' organizations have shown their solidarity with the victims of forced labour. National trade unions have also conducted and published important research, bringing forced labour problems to the attention of their national authorities. But trade unions and employers' organizations have been generally far less active in this area than in other areas. The ILO, in its work to support the activities of these organizations, could encourage them to take up the forced labour cause with renewed vigour.

A special programme against bonded labour

332. The ILO has recently intensified its work for the prevention of bonded labour, and the rescue and rehabilitation of bonded labourers, in certain Asian countries. The governments of the region have demonstrated a willingness to involve the ILO in programmes for its eradication. The launch of new Declaration Programme projects and the regional South Asia programme of the Social Finance Unit to tackle bonded labour through microfinance techniques, are important new developments. And yet a huge

amount remains to be done, in both analytical and data-gathering work, and in practical programmes for its effective eradication. The follow-up to the Declaration now presents an unprecedented opportunity to come to grips with this long-standing problem, affecting perhaps millions of workers.

A wide range of measures and institutions should tackle forced labour

333. An effective programme against bonded labour requires a holistic approach, with the cooperation of a number of different international agencies. This cannot be seen as an exclusively labour problem. An effective and permanent rehabilitation of bonded labourers would require a range of diverse measures, including: land questions; data collection; construction of low-cost dwelling units and sanitation; provision of stable and durable employment; enforcement of minimum wage; education of children of bonded labourers; protection of civil rights; sensitization of society at large as to the rights of the groups that are most likely to fall prey to bonded labour situations. And this list is not exhaustive.

334. Thus, here is a real opportunity for the ILO, in collaboration with governments and the social partners in the countries concerned, to launch a significant international programme of action against a social plague which governments, despite their legislative and practical efforts over the past three decades, have had so much difficulty in addressing effectively. An integrated programme against bonded labour would concern many different ministries and other actors in the countries concerned. At the international level, the ILO itself could play the lead role in launching a comprehensive promotional programme to assist governments in eradicating one of the most serious structural problems of forced labour in the modern world. Experience with such a programme could instruct similar initiatives aimed at other sectors, such as domestic work, where millions of the poor find themselves in situations of forced labour.

5. Final remarks

335. There is no excuse for forced labour in the twenty-first century. The ILO Declaration has provided the opportunity to remind us that forced labour is unfortunately still very much with us, albeit in pockets, around the globe. It has created a renewed chance for governments to recognize its existence, for the ILO to encourage their efforts to eliminate it, and for the social partners to continue to pursue this cause for human freedom.

Suggested points for discussion

1. Do the broad forms of forced labour identified in the Report — (i) forced labour in the form of chattel slavery, debt bondage, etc., found primarily in rural areas; (ii) forced labour situations related to trafficking of persons; and (iii) certain forms of prison labour — capture the totality and the reality of all forms of forced or compulsory labour in today's world?

2. Why do rural forced labour and trafficking-related forced labour arise in certain circumstances where poverty is present but not in others? What other crucial factors come into play?

3. How does the relative status of women and men, girls and boys, and various ethnic, racial, religious and age groups within a society affect their vulnerability to situations of forced labour? What are the implications for strategies to eliminate all forms of forced or compulsory labour?

4. To address rural forced labour, what can various institutions of government and employers' and workers' organizations do — individually and together — to raise awareness among victim populations? To release them? To ensure that they do not fall back into situations of forced labour? To make sure that others do not take their place?

5. What are the political, legislative, administrative and other hurdles to combating trafficking-related forced labour within the countries of origin? In the countries to which the victims are trafficked? What can various institutions of government and employers' and workers' organizations do to overcome these hurdles?

6. How do freedom of association and the effective recognition of the right to collective bargaining relate to the elimination of all forms of forced or compulsory labour?

7. Where forced or compulsory labour has been eliminated, what have been the key factors for this success? What types of technical cooperation seem to offer particular promise for eliminating forced or compulsory labour practices?

8. In the case of labour trafficking, what is the ILO's appropriate niche? Should the elimination of forced or compulsory labour be given greater emphasis in the work of the ILO? Concretely, in which ways?

9. What sort of progress in the elimination of all forms of forced or compulsory labour should be seen between this first Global Report and the next one? How should this be measured? What additional issues should be addressed in the next Global Report on this topic?

Annexes

Annex 1

ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up

Whereas the ILO was founded in the conviction that social justice is essential to universal and lasting peace;

Whereas economic growth is essential but not sufficient to ensure equity, social progress and the eradication of poverty, confirming the need for the ILO to promote strong social policies, justice and democratic institutions;

Whereas the ILO should, now more than ever, draw upon all its standard-setting, technical cooperation and research resources in all its areas of competence, in particular employment, vocational training and working conditions, to ensure that, in the context of a global strategy for economic and social development, economic and social policies are mutually reinforcing components in order to create broad-based sustainable development;

Whereas the ILO should give special attention to the problems of persons with special social needs, particularly the unemployed and migrant workers, and mobilize and encourage international, regional and national efforts aimed at resolving their problems, and promote effective policies aimed at job creation;

Whereas, in seeking to maintain the link between social progress and economic growth, the guarantee of fundamental principles and rights at work is of particular significance in that it enables the persons concerned to claim freely and on the basis of equality of opportunity their fair share of the wealth which they have helped to generate, and to achieve fully their human potential;

Whereas the ILO is the constitutionally mandated international organization and the competent body to set and deal with international labour standards, and enjoys universal support and acknowledgement in promoting fundamental rights at work as the expression of its constitutional principles;

Whereas it is urgent, in a situation of growing economic interdependence, to reaffirm the immutable nature of the fundamental principles and rights

embodied in the Constitution of the Organization and to promote their universal application;

The International Labour Conference,

1. Recalls:

   (a) that in freely joining the ILO, all Members have endorsed the principles and rights set out in its Constitution and in the Declaration of Philadelphia, and have undertaken to work towards attaining the overall objectives of the Organization to the best of their resources and fully in line with their specific circumstances;

   (b) that these principles and rights have been expressed and developed in the form of specific rights and obligations in Conventions recognized as fundamental both inside and outside the Organization.

2. Declares that all Members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organization, to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions, namely:

   (a) freedom of association and the effective recognition of the right to collective bargaining;

   (b) the elimination of all forms of forced or compulsory labour;

   (c) the effective abolition of child labour; and

   (d) the elimination of discrimination in respect of employment and occupation.

3. Recognizes the obligation on the Organization to assist its Members, in response to their established and expressed needs, in order to attain these objectives by making full use of its constitutional, operational and budgetary resources, including by the mobilization of external resources and support, as well as by encouraging other international organizations with which the ILO has established relations, pursuant to article 12 of its Constitution, to support these efforts:

   (a) by offering technical cooperation and advisory services to promote the ratification and implementation of the fundamental Conventions;

   (b) by assisting those Members not yet in a position to ratify some or all of these Conventions in their efforts to respect, to promote and to realize the principles concerning fundamental rights which are the subject of those Conventions; and

   (c) by helping the Members in their efforts to create a climate for economic and social development.

4. Decides that, to give full effect to this Declaration, a promotional follow-up, which is meaningful and effective, shall be implemented in accordance with the measures specified in the annex hereto, which shall be considered as an integral part of this Declaration.

5. Stresses that labour standards should not be used for protectionist trade purposes, and that nothing in this Declaration and its follow-up shall be invoked or otherwise used for such purposes; in addition, the comparative advantage of any country should in no way be called into question by this Declaration and its follow-up.

Annex

Follow-up to the Declaration

I. Overall purpose

1. The aim of the follow-up described below is to encourage the efforts made by the Members of the Organization to promote the fundamental principles and rights enshrined in the Constitution of the ILO and the Declaration of Philadelphia and reaffirmed in this Declaration.
2. In line with this objective, which is of a strictly promotional nature, this follow-up will allow the identification of areas in which the assistance of the Organization through its technical cooperation activities may prove useful to its Members to help them implement these fundamental principles and rights. It is not a substitute for the established supervisory mechanisms, nor shall it impede their functioning; consequently, specific situations within the purview of those mechanisms shall not be examined or re-examined within the framework of this follow-up.
3. The two aspects of this follow-up, described below, are based on existing procedures: the annual follow-up concerning non-ratified fundamental Conventions will entail merely some adaptation of the present modalities of application of article 19, paragraph 5(e), of the Constitution; and the Global Report will serve to obtain the best results from the procedures carried out pursuant to the Constitution.

II. Annual follow-up concerning non-ratified fundamental Conventions

A. Purpose and scope

1. The purpose is to provide an opportunity to review each year, by means of simplified procedures to replace the four-year review introduced by the Governing Body in 1995, the efforts made in accordance with the Declaration by Members which have not yet ratified all the fundamental Conventions.
2. The follow-up will cover each year the four areas of fundamental principles and rights specified in the Declaration.

B. Modalities

1. The follow-up will be based on reports requested from Members under article 19, paragraph 5(e), of the Constitution. The report forms will be drawn up so as to obtain information from governments which have not ratified one or more of the fundamental Conventions, on any changes which may have taken place in their law and practice, taking due account of article 23 of the Constitution and established practice.
2. These reports, as compiled by the Office, will be reviewed by the Governing Body.
3. With a view to presenting an introduction to the reports thus compiled, drawing attention to any aspects which might call for a more in-depth discussion, the Office may call upon a group of experts appointed for this purpose by the Governing Body.
4. Adjustments to the Governing Body's existing procedures should be examined to allow Members which are not represented on the Governing Body to provide, in the most appropriate way, clarifications which might prove necessary or useful during Governing Body discussions to supplement the information contained in their reports.

III. Global Report

A. Purpose and scope

1. The purpose of this report is to provide a dynamic global picture relating to each category of fundamental principles and rights noted during the preceding four-year period, and to serve as a basis for assessing the effectiveness of the assistance provided by the Organization, and for determining priorities for the following period, in the form of action plans for technical cooperation designed in particular to mobilize the internal and external resources necessary to carry them out.

2. The report will cover, each year, one of the four categories of fundamental principles and rights in turn.

B. Modalities

1. The report will be drawn up under the responsibility of the Director-General on the basis of official information, or information gathered and assessed in accordance with established procedures. In the case of States which have not ratified the fundamental Conventions, it will be based in particular on the findings of the aforementioned annual follow-up. In the case of Members which have ratified the Conventions concerned, the report will be based in particular on reports as dealt with pursuant to article 22 of the Constitution.

2. This report will be submitted to the Conference for tripartite discussion as a report of the Director-General. The Conference may deal with this report separately from reports under article 12 of its Standing Orders, and may discuss it during a sitting devoted entirely to this report, or in any other appropriate way. It will then be for the Governing Body, at an early session, to draw conclusions from this discussion concerning the priorities and plans of action for technical cooperation to be implemented for the following four-year period.

IV. It is understood that:

1. Proposals shall be made for amendments to the Standing Orders of the Governing Body and the Conference which are required to implement the preceding provisions.

2. The Conference shall, in due course, review the operation of this follow-up in the light of the experience acquired to assess whether it has adequately fulfilled the overall purpose articulated in Part I.

The foregoing is the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up duly adopted by the General Conference of the International Labour Organization during its Eighty-sixth Session which was held at Geneva and declared closed the 18 June 1998.

IN FAITH WHEREOF we have appended our signatures this nineteenth day of June 1998.

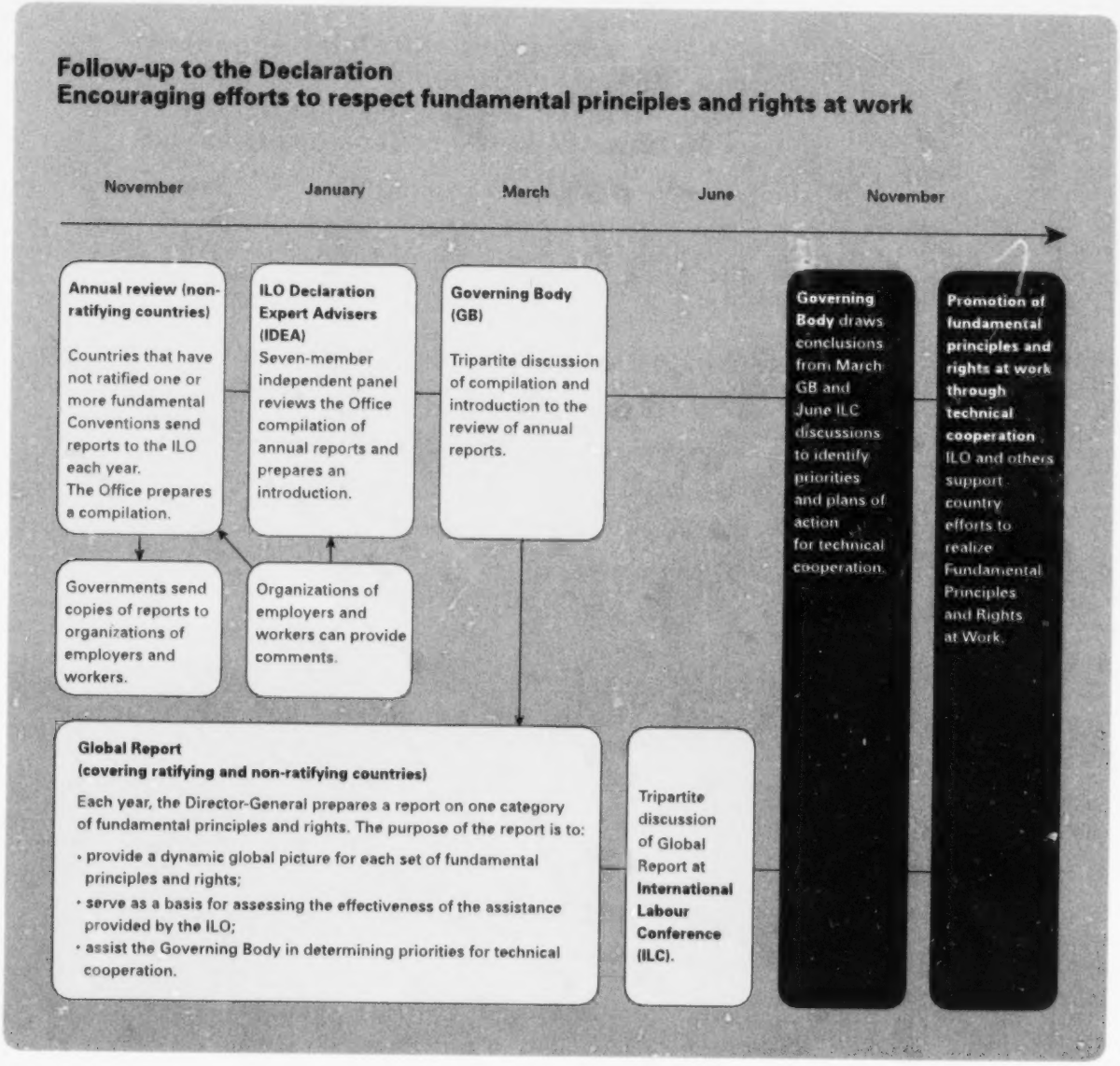
The President of the Conference,

JEAN-JACQUES OESCHSLIN

The Director-General of the International Labour Office.

MICHEL HANSENNE

Annex 2


Follow-up to the Declaration
Encouraging efforts to respect fundamental principles and rights at work
November
January
March
June
November
Annual review (non-ratifying countries)
Countries that have not ratified one or more fundamental Conventions send reports to the ILO each year.
The Office prepares a compilation.
ILO Declaration Expert Advisers (IDEA)
Seven-member independent panel reviews the Office compilation of annual reports and prepares an introduction.
Governing Body (GB)
Tripartite discussion of compilation and introduction to the review of annual reports.
Governing Body draws conclusions from March GB and June ILC discussions to identify priorities and plans of action for technical cooperation.
Promotion of fundamental principles and rights at work through technical cooperation
ILO and others support country efforts to realize Fundamental Principles and Rights at Work.
Governments send copies of reports to organizations of employers and workers.
Organizations of employers and workers can provide comments.
Global Report
(covering ratifying and non-ratifying countries)
Each year, the Director-General prepares a report on one category of fundamental principles and rights. The purpose of the report is to:
• provide a dynamic global picture for each set of fundamental principles and rights;
• serve as a basis for assessing the effectiveness of the assistance provided by the ILO;
• assist the Governing Body in determining priorities for technical cooperation.
Tripartite discussion of Global Report at International Labour Conference (ILC).

Annex 3

Table of ratifications of ILO Conventions Nos. 29 and 105 and annual reports submitted under the Declaration follow-up in relation to elimination of all forms of forced or compulsory labour

No. 29 – Forced Labour Convention, 1930 (156 ratifications by 1 March 2001)

No. 105 – Abolition of Forced Labour Convention, 1957 (153 ratifications by 1 March 2001)

Explanation of symbols in the table

R Convention ratified by 1 March 2001

— Convention not ratified by 1 March 2001

yes Report received

no Report not received

n/a Not applicable

Member States	Ratifications		First annual report on the elimination of forced labour submitted under the Declaration	Subsequent annual report under the Declaration
	C. 29	C. 105		
Afghanistan	—	R	no	no
Albania	R	R	n/a	n/a
Algeria	R	R	n/a	n/a
Angola	R	R	n/a	n/a
Antigua and Barbuda	R	R	n/a	n/a
Argentina	R	R	n/a	n/a
Armenia	—	—	no	no

Member States	Ratifications C. 29	C. 105	First annual report on the elimination of forced labour submitted under the Declaration	Subsequent annual report under the Declaration
Australia	R	R	n/a	n/a
Austria	R	R	n/a	n/a
Azerbaijan	R	R	yes	n/a
Bahamas	R	R	n/a	n/a
Bahrain	R	R	n/a	n/a
Bangladesh	R	R	n/a	n/a
Barbados	R	R	n/a	n/a
Belarus	R	R	n/a	n/a
Belgium	R	R	n/a	n/a
Belize	R	R	n/a	n/a
Benin	R	R	n/a	n/a
Bolivia	—	R	yes	—
Bosnia and Herzegovina	R	R	yes	n/a
Botswana	R	R	n/a	n/a
Brazil	R	R	n/a	n/a
Bulgaria	R	R	n/a	n/a
Burkina Faso	R	R	n/a	n/a
Burundi	R	R	n/a	n/a
Cambodia	R	R	n/a	n/a
Cameroon	R	R	n/a	n/a
Canada	—	R	yes	yes
Cape Verde	R	R	n/a	n/a
Central African Republic	R	R	n/a	n/a
Chad	R	R	n/a	n/a
Chile	R	R	n/a	n/a
China	—	—	yes	yes
Colombia	R	R	n/a	n/a
Comoros	R	R	n/a	n/a
Congo	R	R	n/a	n/a
Costa Rica	R	R	n/a	n/a
Côte d'Ivoire	R	R	n/a	n/a
Croatia	R	R	n/a	n/a
Cuba	R	R	n/a	n/a
Cyprus	R	R	n/a	n/a
Czech Republic	R	R	n/a	n/a

Member States	Ratifications C. 29	C. 105	First annual report on the elimination of forced labour submitted under the Declaration	Subsequent annual report under the Declaration
Democratic Republic of the Congo	R	—	yes	yes
Denmark	R	R	n/a	n/a
Djibouti	R	R	n/a	n/a
Dominica	R	R	n/a	n/a
Dominican Republic	R	R	n/a	n/a
Ecuador	R	R	n/a	n/a
Egypt	R	R	n/a	n/a
El Salvador	R	R	n/a	n/a
Equatorial Guinea	—	—	no	no
Eritrea	R	R	yes	n/a
Estonia	R	R	n/a	n/a
Ethiopia	—	R	yes	yes
Fiji	R	R	n/a	n/a
Finland	R	R	n/a	n/a
France	R	R	n/a	n/a
Gabon	R	R	n/a	n/a
Gambia	—	—	yes	yes
Georgia	R	R	n/a	n/a
Germany	R	R	n/a	n/a
Ghana	R	R	n/a	n/a
Greece	R	R	n/a	n/a
Grenada	R	R	n/a	n/a
Guatemala	R	R	n/a	n/a
Guinea	R	R	n/a	n/a
Guinea-Bissau	R	R	n/a	n/a
Guyana	R	R	n/a	n/a
Haiti	R	R	n/a	n/a
Honduras	R	R	n/a	n/a
Hungary	R	R	n/a	n/a
Iceland	R	R	n/a	n/a
India	R	R	yes	n/a
Indonesia	R	R	n/a	n/a
Iran, Islamic Republic of	R	R	n/a	n/a
Iraq	R	R	yes	n/a

Member States	Ratifications		First annual report on the elimination of forced labour submitted under the Declaration	Subsequent annual report under the Declaration
	C. 29	C. 105		
Ireland	R	R	n/a	n/a
Israel	R	R	n/a	n/a
Italy	R	R	n/a	n/a
Jamaica	R	R	n/a	n/a
Japan	R	—	yes	yes
Jordan	R	R	n/a	n/a
Kazakhstan	—	—	yes	no
Kenya	R	R	n/a	n/a
Kiribati	—	—	n/a	no
Korea, Republic of	—	—	yes	yes
Kuwait	R	R	n/a	n/a
Kyrgyzstan	R	R	n/a	n/a
Lao People's Democratic Republic	R	—	no	no
Latvia	—	R	yes	no
Lebanon	R	R	n/a	n/a
Lesotho	R	—	no	yes
Liberia	R	R	n/a	n/a
Libyan Arab Jamahiriya	R	R	n/a	n/a
Lithuania	R	R	n/a	n/a
Luxembourg	R	R	n/a	n/a
Madagascar	R	—	no	yes
Malawi	R	R	n/a	n/a
Malaysia	R	—	no	yes
Mali	R	R	n/a	n/a
Malta	R	R	n/a	n/a
Mauritania	R	R	n/a	n/a
Mauritius	R	R	n/a	n/a
Mexico	R	R	n/a	n/a
Moldova, Republic of	R	R	no	n/a
Mongolia	—	—	no	no
Morocco	R	R	n/a	n/a
Mozambique	—	R	yes	yes
Myanmar	R	—	no	no
Namibia	R	R	yes	yes

Member States	Ratifications C. 29	C. 105	First annual report on the elimination of forced labour submitted under the Declaration	Subsequent annual report under the Declaration
Nepal	—	—	yes	yes
Netherlands	R	R	n/a	n/a
New Zealand	R	R	n/a	n/a
Nicaragua	R	R	n/a	n/a
Niger	R	R	n/a	n/a
Nigeria	R	R	n/a	n/a
Norway	R	R	n/a	n/a
Oman	R	—	no	no
Pakistan	R	R	n/a	n/a
Panama	R	R	n/a	n/a
Papua New Guinea	R	R	n/a	n/a
Paraguay	R	R	n/a	n/a
Peru	R	R	n/a	n/a
Philippines	—	R	yes	yes
Poland	R	R	n/a	n/a
Portugal	R	R	n/a	n/a
Qatar	R	—	yes	yes
Romania	R	R	n/a	n/a
Russian Federation	R	R	n/a	n/a
Rwanda	—	R	no	no
Saint Kitts and Nevis	R	R	no	yes
Saint Lucia	R	R	n/a	n/a
Saint Vincent and the Grenadines	R	R	n/a	n/a
San Marino	R	R	n/a	n/a
Sao Tome and Principe	—	—	no	no
Saudi Arabia	R	R	n/a	n/a
Senegal	R	R	n/a	n/a
Seychelles	R	R	n/a	n/a
Sierra Leone	R	R	n/a	n/a
Singapore	R	—	no	yes
Slovakia	R	R	n/a	n/a
Slovenia	R	R	n/a	n/a
Solomon Islands	R	—	no	no
Somalia	R	R	n/a	n/a

Member States	Ratifications		First annual report on the elimination of forced labour submitted under the Declaration	Subsequent annual report under the Declaration
	C. 29	C. 105		
South Africa	R	R	n/a	n/a
Spain	R	R	n/a	n/a
Sri Lanka	R	—	yes	yes
Sudan	R	R	n/a	n/a
Suriname	R	R	n/a	n/a
Swaziland	R	R	n/a	n/a
Sweden	R	R	n/a	n/a
Switzerland	R	R	n/a	n/a
Syrian Arab Republic	R	R	n/a	n/a
Tajikistan	R	R	n/a	n/a
Tanzania, United Republic of	R	R	n/a	n/a
Thailand	R	R	n/a	n/a
The former Yugoslav Republic of Macedonia	R	—	no	no
Togo	R	R	n/a	n/a
Trinidad and Tobago	R	R	n/a	n/a
Tunisia	R	R	n/a	n/a
Turkey	R	R	n/a	n/a
Turkmenistan	R	R	n/a	n/a
Uganda	R	R	n/a	n/a
Ukraine	R	R	yes	yes
United Arab Emirates	R	R	n/a	n/a
United Kingdom	R	R	n/a	n/a
United States	—	R	yes	yes
Uruguay	R	R	n/a	n/a
Uzbekistan	R	R	n/a	n/a
Venezuela	R	R	n/a	n/a
Viet Nam	—	—	yes	yes
Yemen	R	R	n/a	n/a
Yugoslavia	R	—	no*	no*
Zambia	R	R	n/a	n/a
Zimbabwe	R	R	n/a	n/a

* Under United Nations resolutions applicable at the time, no reports were requested. The Government of the Federal Republic of Yugoslavia has not yet notified the ILO as to whether it wishes to continue to be bound by the obligations under Conventions ratified by the former Socialist Federal Republic of Yugoslavia.

Annex 4

International instruments relevant to forced labour

A. ILO instruments

In addition to the two main ILO instruments dealing with forced labour as their principal subject — the Forced Labour Convention, 1930 (No. 29) and the Abolition of Forced Labour Convention, 1957 (No. 105) — the Organization has at its disposal other normative tools that can help inspire action for the elimination of all forms of forced or compulsory labour.[1] Without attempting to be exhaustive or detailed, this Annex points out the range of instruments that might serve as a source for policy guidance or, in the event of a member State having ratified a Convention, create obligations relevant to the prevention of forced labour.[2] The follow-up to the ILO Declaration on Fundamental Principles and Rights at Work does not by any means imply the obligations detailed in the Conventions mentioned in this Annex, but these instruments can provide useful guidance for pursuit of an active policy to eliminate all forms of forced or compulsory labour.

First of all, there are the three other categories of fundamental principles and rights encompassed by the ILO Declaration, i.e. those regarding freedom of association and the effective recognition of the right to collective bargaining; the elimination of discrimination in respect of employment and occupation;

[1] The full text of ILO Conventions and Recommendations adopted since 1919 and information on ratifications is available through the ILO website (http://www.ilo.org), on CD-ROM (ILOLEX) and in printed form.

[2] In the case of ratified Conventions, member States enter into obligations and are required to report regularly on the effect given to the provisions of the Conventions. An extensive supervisory machinery is in place to follow up on the application of ratified Conventions. For further information, consult the ILO website.

and the effective abolition of child labour.[3] The four categories covered by the Declaration involve mutually reinforcing principles and rights. In addition, provisions of Conventions on topics as diverse as those concerning indigenous peoples, migrant workers, recruitment practices, protection of wages and social dialogue can underpin certain forms of action to prevent or combat forced or compulsory labour. Conventions designated as priority instruments for the ILO, i.e. those relating to employment policy, labour inspection and tripartite consultation,[4] involve institutional support for sound labour practices that may also contribute to preventing or eliminating forced labour.

ILO forced labour Conventions

Under the Forced Labour Convention, 1930 (No. 29), the term *forced or compulsory labour* means "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily". For the purposes of the Convention, there are certain exclusions, however.[5] Moreover, Convention No. 29 specifically prohibits certain forms of forced or compulsory labour, such as forced or compulsory labour for the benefit of private individuals, companies or associations; and forced or compulsory labour as a punishment for crimes if it is applied to an entire community.

Under Convention No. 29, Members undertake to suppress the use of forced or compulsory labour in all its forms within the shortest possible period. During the transitional period, now past, recourse could only be had to forced labour for public purposes and as an exceptional measure, subject to certain guarantees.[6]

The Abolition of Forced Labour Convention, 1957 (No. 105), supplements rather than revises the earlier instrument. Convention No. 105 calls for the immediate and complete abolition of any form of forced or compulsory labour in five specified cases: (a) as a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system; (b) as a method of mobilizing and using labour for the purposes of economic development; (c) as a means of labour discipline; (d) as a punishment for having participated in strikes; and (e) as a means of racial, social, national or religious discrimination.

Other ILO Conventions of particular relevance to preventing forced labour

Several other ILO instruments address issues of forced labour, either directly or indirectly. Under the Employment Policy Convention, 1964 (No. 122),

[3] In addition to the Forced Labour Convention, 1930 (No. 29) and the Abolition of Forced Labour Convention, 1957 (No. 105), the Conventions considered fundamental for purposes of the follow-up to the Declaration are: Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87); Right to Organise and Collective Bargaining Convention, 1949 (No. 98); Equal Remuneration Convention, 1951 (No. 100); Discrimination (Employment and Occupation) Convention, 1958 (No. 111); Minimum Age Convention, 1973 (No. 138); and Worst Forms of Child Labour Convention, 1999 (No. 182). Furthermore, there are ILO instruments relating to these topics, such as the Right of Association (Agriculture) Convention, 1921 (No. 11).

[4] Employment Policy Convention, 1964 (No. 122); Labour Inspection Convention, 1947 (No. 81); Labour Inspection (Agriculture) Convention, 1969 (No. 129); and Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144).

[5] For purposes of the Convention, the term "forced or compulsory labour" does not include the five categories of work which are detailed in footnote 2, Part I of this Report.

[6] See ILO: *Abolition of Forced Labour*, General Survey by the Committee of Experts on the Application of Conventions and Recommendations, International Labour Conference, 65th Session, Geneva, 1979.

Members are to formulate and apply an active policy aimed at promoting full, productive and *freely chosen* employment. By looking at the other side of the coin, from the perspective of freedom of labour, the instrument places emphasis on the positive labour market interventions and other measures that can help to eradicate coercive systems of work.

ILO instruments on indigenous and tribal peoples have emphasized the need to confront the particular problems of forced and compulsory labour experienced by those groups. The most recent of these is the Indigenous and Tribal Peoples Convention, 1989 (No. 169). Under this instrument, the exaction of compulsory personal services in any form, whether paid or unpaid, is to be prohibited and punishable by law, except in cases permitted for all citizens under the exceptions to Convention No. 29. Convention No. 169 further provides that measures to prevent any discrimination against indigenous and tribal peoples should include measures to ensure that workers belonging to these peoples are not subjected to coercive recruitment systems, including bonded labour and other forms of debt servitude. An earlier instrument, the Indigenous and Tribal Populations Convention, 1957 (No. 107), now revised by Convention No. 169, sets out the basic standards for special measures of protection for these peoples with regard to recruitment and conditions of employment, as well as land and other basic rights.

In relation to persons crossing borders for employment purposes, the Migration for Employment Convention (Revised), 1949 (No. 97) aims at assisting migrants for employment, in particular through provision of free placement services, information and various other support services. In particular, it calls for action against misleading propaganda regarding emigration or immigration, which often plays a role in trafficking related to forced labour. The Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), requires the adoption of all necessary and appropriate measures, within a State's jurisdiction and in collaboration with other member States, to suppress clandestine movements of migrants for employment and illegal employment of migrants, and to take action against those involved in the abuses identified by the Convention. While these instruments provide considerable protection for migrants who may be at risk of falling into situations of forced labour, their revision has been suggested with a view to filling gaps in coverage and permitting broader ratification.[7]

The International Labour Conference has adopted a number of instruments designed to provide workers with terms and conditions of employment that would contribute to preventing situations of forced labour from emerging. The most directly relevant of these is the Protection of Wages Convention, 1949 (No. 95), which contains several measures aimed at protecting workers in relation to how they are paid (with limits on payment in kind instead of legal tender), where they are paid (e.g. not in taverns), and how they are to be informed about their earnings. The Convention also places safeguards on permissible deductions from wages and measures to avoid exploitation of workers through company stores. Based on the central idea that employers are prohibited from limiting in any manner the freedom of the worker to dispose of his or her wages, the instrument addresses many of the practical dilemmas in which persons subjected to forced labour find themselves.

In adopting the Private Employment Agencies Convention, 1998 (No. 181), the International Labour Conference recalled the provisions of the Forced Labour Convention (No. 29) in its preamble. The new Convention

[7] ILO: *Migrant workers*, International Labour Conference, 87th Session, Geneva, 1999, Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 1B), para. 667.

recognizes the role of private employment agencies in the labour market and includes a number of protections against abuse for workers who use their services. It refers specifically to the need for laws and regulations which provide for penalties, including prohibition of private employment agencies which engage in fraudulent practices and abuses in relation to migrant workers and encouragement of bilateral agreements between countries. Adequate machinery and procedures are also to be established to investigate complaints, alleged abuses and fraudulent practices of private employment agencies.

Furthermore, the range of ILO instruments designed to strengthen the capacity of workers and employers to form organizations to defend their interests and engage in social dialogue also have the effect of strengthening participation and thereby the ability to resist falling into forced labour situations. A prime example is the Rural Workers' Organizations Convention, 1975 (No. 141), which calls upon ratifying States to pursue a policy of active encouragement to these organizations. It also aims to facilitate the establishment and growth of strong and independent organizations, on a voluntary basis, as an effective means to ensure the participation of rural workers in economic and social development and in the benefits resulting from it.

Finally, the Worst Forms of Child Labour Convention, 1999 (No. 182), refers to slavery and slavery-like practices. For the purposes of this Convention, the term "the worst forms of child labour" refers inter alia to "all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict". States are to take immediate and effective measures (including a programme of action and enforcement measures) to prohibit and eliminate trafficking in girls and boys under 18 years of age. Convention No. 182 contains a number of other provisions designed to prevent conditions conducive to trafficking. This Convention has broken all speed records for ratification (62 ratifications between its adoption in June 1999 and 1 March 2001).

B. United Nations instruments

The Universal Declaration of Human Rights proclaims that, "All human beings are born free and equal in dignity and rights ..." (Art. 1). "No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms" (Art. 4).

The first international definition of slavery is found in the League of Nations Slavery Convention of 1926, which defines slavery as the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised (Art. 1(1)). The 1926 Convention also prohibits all aspects of the slave trade, including all acts involved in the capture, acquisition or disposal of a person with intent to reduce him or her to slavery (Art.1(2)). Contracting Parties are also required to take all necessary measures to prevent compulsory or forced labour from developing into conditions analogous to slavery (Art. 5).

Slavery-like conditions are defined in a United Nations instrument adopted in 1956, the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery. This instrument calls on all States Parties to abolish progressively, and as soon as possible, such practices as debt bondage and serfdom. Debt bondage is defined as "the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined" (Art. 1(a)). Serfdom is defined as "the condition or status of a tenant

who is by law, custom or agreement bound to live and labour on land belonging to another person and to render some determinate service to such other person, whether for reward or not, and is not free to change his status" (Art. 1(b)).

Of the United Nations instruments, forced and compulsory labour are addressed in most detail in the International Covenant on Civil and Political Rights, adopted by the General Assembly in 1966. This instrument prohibits slavery, the slave trade and servitude in all its forms. The Covenant provides generally that "No one shall be required to perform forced or compulsory labour" (Art. 8(3)(a)). While the terms are not otherwise defined, the United Nations Covenant lists the services that will not be considered as forced or compulsory labour for its purposes. These include: the performance of hard labour in pursuance of a sentence to such a punishment by a competent court (Art. 8(3)(b)); any other work or service normally required of a person under detention in consequence of a lawful court order (Art. 8(3)(c)(i)); any service of a military character, or national service required by law of conscientious objectors (Art. 8(3)(c)(ii)); any service exacted in cases of emergency or calamity threatening the life or well-being of the community (Art. 8(3)(c)(iii)); and any work or service which forms part of normal civic obligations (Art. 8(3)(c)(iv)).

While trafficking in persons has received considerable attention of late, the term was not until very recently defined in United Nations instruments, although the subject was addressed at the beginning of the past century with the treaty to combat the so-called white slave traffic, and later updated in 1949.[8] In November 2000, the General Assembly adopted the United Nations Convention against Transnational Organized Crime, supplemented by the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children. The Convention lays down a number of provisions to fight organized crime, including mutual legal assistance between States, training and technical assistance. For the purposes of the Protocol, "trafficking in persons" shall mean, "the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments of benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs" (Art. 3(a)).

Finally, the United Nations Convention on the Rights of the Child, adopted in 1989 and almost universally ratified, includes the right of the child to be protected from economic exploitation and from performing work which, inter alia, would be harmful to his or her health or physical, mental, spiritual, moral or social development (Art. 32). Another provision calls on countries to take measures to prevent the abduction or sale of, and the trafficking in, children for any purpose or in any form (Art. 35). While these provisions are of direct relevance to the elimination of forced labour, respect for other articles of this Convention would also help set a framework in which it would be much more difficult for forced labour involving children to emerge.

[8] International Convention for the Suppression of the White Slave Traffic, signed in Paris on 4 May 1910, and amended by the Protocol signed in Lake Success, New York, 4 May 1949.